

2009

United Effort Plan Trust v. Jessop : Brief of Appellant

Utah Supreme Court

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IN THE UTAH SUPREME COURT

IN THE MATTER OF THE UNITED
EFFORT PLAN TRUST

APPELLANTS' BRIEF

Supreme Court Case No.
20090691 - SC

Third District Court Civil No.
053900848

APPEAL FROM THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
HONORABLE DENISE P. LINDBERG PRESIDING

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JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to Utah Code Ann. § 78A-2-102(3)(j).

STATEMENT OF ISSUE ON APPEAL

Did the trial court commit legal error in denying Appellants' motions to intervene under Rule 24(a), Utah Rules of Civil Procedure? This Court reviews a trial court's denial of a motion to intervene under Rule 24(a) *de novo*. *In re Marriage of Gonzalez*, 2000 UT 28, ¶ 16, 1 P.3d 1074. This issue was preserved in the trial court at R. 15219-15528, R. 15229-15322, R. 15264-15282, R. 15283-15287, R. 15294-15323, R. 15630-15637 and R. 15704-15711.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND RULES

Utah Code Ann. § 75-7-405(3):

The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

Rule 24(a), Utah Rules of Civil Procedure:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

STATEMENT OF THE CASE

This appeal presents one of many issues arising out of the trial court's reformation and continuing administration of a religious charitable trust known as the United Effort Plan Trust. The present issue centers not on the substance of the trial court's actions, but on whether and

under what circumstances interested persons can obtain party status to challenge the administration of a charitable trust. The trial court ruled that no one besides the state can participate as a party under any circumstances. (Corrected Ruling and Order on Pending Motions, July 17, 2009 (R. 16381-83), copy attached as Addendum A.)

Appellants respectfully ask this Court to reverse that ruling. Appellants consecrated, administered, and exercised stewardships over the real property that comprises the Trust's assets. The appellant Bishops also exercised the religious management over Trust assets which is an integral and indeed core part of FLDS religious practice. Appellants therefore have a special interest in those assets beyond the general interest a taxpayer or the public at large shares in the proper administration of a charitable trust. Rule 24 of the Utah Rules of Civil Procedure, properly applied to the facts of this case, allows Appellants to obtain party status in an action involving ongoing state administration of the Trust and disposition of Trust assets.

Reversing the trial court's ruling will allow Appellant Bishops and Church members to participate as parties in the trial court proceedings (to the extent there are further proceedings following this Court's resolution of the substantive issues relating to the trial court's reformation and ongoing administration of the Trust in related Case No. 20090859-SC). It will also provide necessary clarification in this important area of trust law for future proceedings involving charitable trusts.

STATEMENT OF FACTS

A. Appellants' Special Interest in the UEP Trust and Specific Trust Properties

Appellants Willie Jessop, Dan Johnson and Merlin Jessop ("Appellant Church Members") are members in good standing of the Fundamentalist Church of Jesus Christ of

Latter-Day Saints (the “FLDS Church”). (R. 15201-15218) Appellant Lyle Jeffs is an ordained Bishop of the FLDS Church, with responsibility for Church members residing in Hildale, Utah and Colorado City, Arizona. (R. 15249-14256) Appellant James Oler is also an ordained Bishop for the FLDS Church, with responsibility for Church members residing in Bountiful, British Columbia, Canada. (R. 15257-15263)

As one of the core tenets of their religion, Appellants believe they have been commanded by God, through a Prophet, to establish God’s Kingdom on Earth in these “latter days.” (R. 13198-13200, 13224) Establishing and building that Kingdom requires that faithful Church members consecrate their property, services, time and talents to the FLDS Church, and requires that the Bishops of the Church in turn grant “stewardships” over consecrated property to provide for the good of the whole community. (R. 13199-13200, 13225) This commandment is known as the Law of Consecration and Stewardship or the Holy United Order. (R. 13198)¹

¹ The doctrinal basis of this commandment is found in a book the FLDS consider to be Holy Scripture, the Doctrine & Covenants (“D & C”):

30. And behold, thou wilt remember the poor, and consecrate of thy properties for their support that which thou hast to impart unto them, with a covenant and a *deed which cannot be broken*.

31. And inasmuch as ye impart of your substance unto the poor, ye will do it unto me; and they shall be laid before the bishop of my church and his counselors, two of the elders, or high priests, such as he shall appoint or has appointed and set apart for that purpose.

32. And it shall come to pass, that after they are laid before the bishop of my church, and after that he has received these testimonies concerning the consecration of the properties of my church, that they cannot be taken from the church, agreeable to my commandments, every man shall be made accountable unto me, a steward

The United Effort Plan Trust (“UEP Trust” or “Trust”) was organized as the secular instrumentality for pursuing these religious objectives, enabling faithful members of the Church to organize their communal life in accordance with the Law of Consecration and Stewardship. (R. 13202-13203) Thus the Declaration of Trust states that the Trust was created and exists “to preserve and advance the religious doctrines and goals” of the FLDS Church, and that the Trust is to be administered “consistent with its religious purpose to

over his own property, or that which he has received by consecration, as much as is sufficient for himself and family.

33. And again, if there shall be properties in the hands of the church, or any individuals of it, more than is necessary for their support after this first consecration, which is a residue to be consecrated unto the bishop, it shall be kept to administer to those who have not, from time to time, that every man who has need may be amply supplied and receive according to his wants.

34. Therefore, the residue shall be kept in my storehouse, to administer to the poor and the needy, as shall be appointed by the high council of the church, and the bishop and his council;

35. And for the purpose of purchasing lands for the public benefit of the church, and building houses of worship, and building up the New Jerusalem which is hereafter to be revealed--

36. That my covenant people may be gathered in one in that day when I shall come to my temple. And this I do for the salvation of my people.

37. And it shall come to pass, that he that sinneth and repenteth not shall be cast out of the church, and shall not receive again that which he has consecrated unto the poor and the needy of my church, or in other words, unto me--

38. For inasmuch as ye do it unto the least of these, ye do it unto me.

39. For it shall come to pass, that which I spake by the mouths of my prophets shall be fulfilled; for I will consecrate of the riches of those who embrace my gospel among the Gentiles unto the poor of my people who are of the house of Israel.

D. & C. 42:30-39. *See also* D. & C. 83:5-6.

provide for [FLDS] Church members according to their wants and their needs, insofar as their wants are just (Doctrine and Covenants, Section 82:17-21).” (R. 13223, 13225)²

Properties consecrated to the Trust historically were administered through Church leaders, such as Appellant Bishops, whose calling is to grant stewardships over and otherwise make use of the consecrated properties to meet the “just wants and needs” of faithful Church members. (R. 15250-15251; R. 15258-15259) Substantial Trust landholdings exist in both communities served by Appellant Bishops. (R. 15252-15253; R. 15259-15260) Appellant Church Members were in the past granted religious stewardships by their FLDS Bishops over Trust property, including a property known as the Berry Knoll Farm. (R. 15202, 15208, 15214)

² The scripture referenced in this Trust language states:

17 And you are to be equal, or in other words, you are to have equal claims on the properties, for the benefit of managing the concerns of your stewardships, every man according to his wants and his needs, inasmuch as his wants are just—

18 And all this for the benefit of the church of the living God, that every man may improve upon his talent, that every man may gain other talents, yea, even an hundred fold, to be cast into the Lord’s storehouse, to become the common property of the whole church—

19 Every man seeking the interest of his neighbor, and doing all things with an eye single to the glory of God.

20 This order I have appointed to be an everlasting border unto you, and unto your successors, inasmuch as you sin not.

21 And the soul that sins against this covenant, and hardeneth his heart against it, shall be dealt with according to the laws of my church, and shall be delivered over to the buffetings of Satan until the day of redemption.

D & C Section 82: 17-21.

Appellants have used Trust lands, including the Berry Knoll farm, for over three decades to help provide for the just physical wants and needs of the people. (R. 15202, 15208, 15214) Once consecrated to the Trust in the 1980s, the Bishops of the FLDS Church began granting priesthood stewardship of parcels of Berry Knoll to various FLDS priesthood holders for the benefit of the congregations. (*Id.*) The sacred charge given those men was to improve the consecrated land by turning it into a working, productive farm, and they did so by planting, harvesting, grazing, and irrigating, using the consecrated land to benefit the FLDS faithful. (*Id.*) Based on the efforts of the Bishops and the people to whom they granted sacred stewardships, Berry Knoll became a part of the Church Storehouse from which the Bishops distribute food and resources to help satisfy the just physical wants and needs of the FLDS members. (*Id.*; *see also* R. 15260) Moreover, Appellants, as all FLDS faithful, regard Berry Knoll as a sacred site of a future temple. (R. 15202, 15208, 15214) Thus, Berry Knoll has provided, and, so long as it is not sold, could continue to provide, for the just wants and needs of the people, both temporally and spiritually. (R. 15252, 15260)

Appellants believe, and the language and context of the Trust as a whole make it clear, that any determination of “just wants” is fundamentally a religious determination, and that their granting, receiving, and continued use of stewardships is a solemn right and duty bearing on their exaltation in the hereafter. (R. 13223-13229; R. 15202, 15208, 15214; R. 15250, 15258) To this end, the Declaration of Trust provides:

The United Effort Plan is the effort and striving on the part of Church members toward the Holy United Order. This central principle of the Church requires the gathering together of faithful Church members on consecrated and sacred lands to establish as one pure people the Kingdom of God on Earth under the guidance of Priesthood leadership.

(R. 13224)

B. The Trial Court's Actions Affecting Appellants' Special Interests³

On May 26, 2005, the Attorney General of the State of Utah filed a Petition asking the district court to remove or suspend the then-Trustees of the 1998 Restated Trust. (R. 1-118) The Petition requested “an immediate order suspending the authority and power of the current trustees pending a final decision by the Court on their removal and appointing an interim special fiduciary for the limited purpose of preserving the assets of the trust,” along with other relief. (R. 2)⁴

On June 16, 2005, the Third District Court, Judge Deno Himonas presiding, entered an Order re Preliminary Injunction Appointing a Special Fiduciary and Suspending the Trustees. (R. 512-518) Bruce Wisan was “appointed as Special Fiduciary on a limited basis” as requested by the Attorney General. (R. 16-17) On September 2, 2005, the Third District

³ The procedural background of the trial court action preceding its decision to “reform” the Trust is set forth in the trial court’s Memorandum Decision dated December 13, 2005, R. 3452-3480.

⁴ At precisely the same time, various persons describing themselves as “Private Beneficiaries” petitioned the trial court for the same relief. (R. 119-138) These “Private Beneficiaries” proceeded to file various pleadings, including a Joinder in the Utah Attorney General’s Motion for Preliminary Injunction (R. 430-434) and a Notice of Proposed Substitute Trustees and Request for Partial Reformation of Trust. (R. 567-570) Interestingly, the trial court entertained the pleadings of these “Private Beneficiaries,” as well as other “Interested Parties,” who include well-known ex- and anti-FLDS agitators and persons who sued the trust for alleged mistreatment by Church leaders, and even referred to them as “parties,” in the core proceedings involving the “reformation” of the Trust, discussed below. (R. 3452-3454) Only when Appellant Church Members sought to participate on equal terms with these “Private Beneficiaries” and “Interested Parties” did the trial court conclude that only the Attorneys General have “standing” and seek to “correct and clarify certain prior statements it made” concerning these persons’ status as “parties.” (R. 14063, 14081-14082)

Court, Judge Denise Lindberg presiding, entered an Order on Procedure to Appoint Trustees and Expansion of Special Fiduciary's Authority, which expanded the Special Fiduciary's authority to include the following:

- (a) File lawsuits to recover or protect Trust property as such action is deemed reasonable, prudent, and/or necessary in the discretion of the Fiduciary;
- (b) Manage, lease, or rent the property of the Trust as such action is deemed reasonable, prudent, and/or necessary in the discretion of the Fiduciary;
- (c) Defend against the Tort Lawsuits which have been filed against the Trust as such action is deemed reasonable, prudent, and/or necessary in the discretion of the Fiduciary;
- (d) Work toward the payment of the Trust's property taxes;
- (e) Request and collect money for the payment of taxes from persons residing on Trust property;
- (f) Take action to remove persons who refuse to pay their fair share of property taxes from Trust property; and
- (g) Delay paying property taxes for one or more parcels of Trust property if the Special Fiduciary is unable to raise sufficient funds from persons residing on such property to enable the payment of property taxes for such property.

(R. 1996-2001)

On December 13, 2005, the trial court issued a Memorandum Decision in which it determined that the UEP Trust could properly be "reformed" using the *cy pres* doctrine, such that the court-appointed Special Fiduciary rather than the ecclesiastical leaders of the FLDS Church would administer the UEP Trust to meet the "just wants and needs" of putative Trust beneficiaries in accordance with allegedly "neutral," non-religious principles. (R. 3452-3480) In the Memorandum Decision, the trial court invited proposals for the reformation of the 1998

Restated Trust. (*Id.*, ¶¶ 23, 24, 38 56 and 63) On October 25, 2006, the trial court created the Reformed Trust. (R. 6537)⁵

C. Administration of the Reformed Trust Becomes Hostile to the FLDS, and Disposition of Trust Lands Causes Economic and Spiritual Devastation

Attorneys for the Special Fiduciary have aptly characterized the Special Fiduciary's administration of the Reformed Trust as a "sociological and psychological war with the beneficiaries of the Trust." (R. 11660-11879, at 117-2, 11724) Other court filings by the Special Fiduciary refer to the determination of FLDS Church members' "just wants and needs" in accordance with ecclesiastical determinations informed by Holy Scripture and divine revelation as "the whim of leadership;" to the FLDS Church's religious beliefs and practices in making such determinations as "discriminat[ing] on the basis of religion" and operating "in a religiously discriminatory manner;" and to FLDS Church members as "saboteurs." (R. 13880-13920, at 13381, 13385-13386)

The devastation caused by this "war" from Appellants' perspective is epitomized in the Special Fiduciary's announced intention to sell Trust properties that hold special economic, social, historical and spiritual significance for the FLDS community, including the Harker Farm, the Berry Knoll Farm and the FLDS Temple in Eldorado, Texas. (R. 11145-11590) The Fiduciary's stated purpose for selling these properties is to "resolve the current cash crunch problem" – a multi-million dollar obligation owed to the Special Fiduciary's legal, accounting

⁵ Because the Record on Appeal does not include a copy of the Reformed Declaration of Trust, but merely a "Not Found" notation at the page cited, a copy of the Reformed Declaration of Trust is included as Addendum B to this brief.

and other functionaries. (*Id.*, ¶ 157) But the loss of the properties would cause Appellants substantial economic, social and spiritual damage.

Berry Knoll Farm has long been of central economic and social value to the FLDS Church as a part of the prophetic vision and divine command that the Short Creek area will “become a garden spot of the west” and sustain the faithful members of the community through consecration of its bounty to the Bishop’s Storehouse. (R. 13830-13832) Berry Knoll Farm also has deep religious and historical significance to Church members generally; they believe that the location of a temple site is divinely revealed to Church leaders, and that as a result of a specific prophecy Berry Knoll is a sacred site upon which a temple will be constructed, even if the Church leadership is “scattered,” so long as they remain faithful. (*Id.*) The Special Fiduciary proposes to sell the property to a competing religious group with a competing truth-claim as to its sacred status.

Upon learning of these proposed sales, FLDS Church members, acting through their representatives, Appellant Church Members, sought to prevent the sale of consecrated Trust property. (R. 13193-13195). The trial court ruled that Appellant Church Members lacked standing, and disqualified the FLDS Church’s long-time counsel. (R. 14063-14085) That ruling is the subject of the related pending appeal, *Snow Christensen & Martineau et al v. Judge Denise P. Lindberg*, Supreme Court No. 20080928.

The Special Fiduciary thereafter sought approval of the trial court for the sale of Berry Knoll. (R. 13553-13555) Appellant Church Members opposed that Motion as well. (R. 13826-13859) The Utah Attorney General moved to continue a hearing on the proposed sale, scheduled for November 14, 2008, and all interested parties agreed to a stay of litigation

and a general stand-down so that discussions could be pursued toward a negotiated resolution of the underlying issues that would not involve further sales of consecrated and sacred Trust property. (R. 14623)

Four full days of mediation, utilizing the services of Judge Paul Cassell as the mediator, ensued. After these and other extensive negotiations, the FLDS Church and the Utah Attorney General reached broad agreement on material settlement terms, including payment of the Special Fiduciary's outstanding fees and other Trust obligations, without the need to sell Trust property. (R. 15652-15661) On June 22, 2009, the trial court rejected those settlement terms on the basis that the proposed settlement "decidedly favors the FLDS Church and its adherents" (R. 16424-16431, at 16425) The court continued:

[T]he Utah A.G./FLDS proposal is troubling in that it potentially provides for unconstitutional distribution of Trust property to an organization that will likely use it in support of an illegal practice [polygamy]. Such use of Trust property would violate principles of Trust law governing charitable trusts, and would make the UEP Trust fail.

(*Id.* at 16426-16427)

Having rejected settlement efforts, the trial court ordered a form of "public hearing" on the Special Fiduciary's proposed sale of the Berry Knoll Farm. (*Id.* at 14628; R. 16415-16423) At the "public hearing," while participation was allowed from a variety of perspectives, the FLDS Church and its members were allotted only five speakers with five minutes each to address the issues. (R. 16417) None of the speakers was sworn, no cross examination was allowed, no evidence was received, and there was not even any concrete proposal for the sale of the property. (R. 16448) Included among the comments at the "public hearing" were the claims of disgruntled former FLDS Church members who felt they had been mistreated by

FLDS Church leadership in the administration of the UEP Trust decades ago, and who implored the trial court to grant them relief from the Church's actions. (*See, e.g., Id.*, pp. 35-37, 40-44, 44-46, 47-50, 50-52, 53-56)

Following the "public hearing," the trial court issued a written decision authorizing the sale of the Berry Knoll Farm to the highest bidder. (R. 16483-16491)

D. Appellants' Efforts To Formally Intervene.

After having their initial efforts to block the sale of Berry Knoll rejected for lack of "standing," and realizing their efforts to resolve either the specific Berry Knoll dispute or the more global situation through mediation would be unavailing, Appellant Church Members sought to formally intervene in the action pursuant to Rule 24(a), Utah Rules of Civil Procedure. (R. 15201-15232) Appellant Bishops also sought to intervene in their capacities as FLDS Bishops. (R. 15249-15287)

The trial court denied Appellants' Motions to Intervene. (R. 16376) Based on its denial of the Motions to Intervene, the court also denied Intervenors' Motion to Stay Proceedings, to Replace Special Fiduciary and to Enjoin Further Actions of Special Fiduciary Pending Evidentiary Hearing, and Intervenors' Motion for Expedited Discovery, without addressing the merits of those motions. (R. 16377)

E. The Attorneys General's And Other Parties' Failure Adequately To Represent Appellants' Interests

The Utah Attorney General was quoted in the Associated Press on May 26, 2005 as saying, "in stepping in today, we are protecting members of the FLDS church." (Addendum C ["Shurtleff wants to freeze FLDS trust fund"]) He was also quoted as saying that the trustees

had “violated their duty to church members . . . I’m trying to protect them.” (*Id.*)

Unfortunately, however sincere the Attorney General’s words, his actions have consistently fallen short.

When the trial court established the Reformed Trust, it identified securing housing for Trust beneficiaries as a primary objective in meeting their “just wants and needs,” and further made it clear that decisions concerning disposition of Trust assets were to be made without regard to religious belief or practice. (App. A, Reformed Declaration of Trust Recital E.3, Sections 4.1, 6.5) In his disposition of Trust housing, the Fiduciary has focused on securing housing for non- and anti-FLDS persons, at the expense of FLDS Church members. Numerous examples of this practice are set forth in the record. (R. 15329-15433, at 15330-15337, 15360-15423) In his disposition of other Trust property, the Fiduciary has similarly acted in a manner that consistently discriminates in favor of disgruntled former FLDS members but that is contrary to the best interests of the vast majority of Trust beneficiaries; again, numerous examples are set forth in the record. (R. 15337-15340) The advisory board has consistently been comprised of anti-FLDS activists, and the Special Fiduciary employs assistants in Colorado City who are also anti-FLDS. One of them has been convicted of criminal trespass against the FLDS, and the other—along with the Special Fiduciary himself—are awaiting trial in Arizona on similar charges.

The trial court’s initial charge to the Fiduciary also included a charge to defend the Trust against lawsuits brought against the Trust by third parties. (R. 1996-2001) The Fiduciary’s actions in carrying out that responsibility included engaging in collusion with the plaintiffs’ attorneys in fraudulently procuring an \$8.8 million default judgment against the

prior Trustees, which actions are the subject of a separate fraud action pending in Third District Court, *The Fundamentalist Church of Jesus Christ of Latter-day Saints v. Wisan*, Case No. 080918199.

One particularly disturbing aspect of the Fiduciary's procuring the default judgment is the fact that upon its being granted, the Fiduciary's counsel and the Hooles, who have assiduously pursued litigation against the Trust on behalf of disgruntled former Church members, are observed on the courtroom video as exchanging "high fives." (R. 15340) The reason is that the judgment allowed the Fiduciary subsequently to execute on additional valuable property that has never been in the Trust, the so-called Harker Farm, and divert the resources of that property away from the FLDS community and toward support of the Fiduciary's war on the community. (R. 15340-15341)

The Fiduciary's activities were supposed to be "subject to and limited by the availability of funds in the Trust estate to reimburse the Special Fiduciary for the costs, fees and other Court approved expenses incurred by the Special Fiduciary and his attorneys." (R. 546-554) Yet with no source of income and operating under an order which prohibited him from incurring any debt, as of the summer of 2008, Mr. Wisan had spent \$3,532,408 of Trust funds, including \$333,484 in paid Fiduciary fees and \$1,692,342 in paid attorney's fees. It had outstanding debt owed to the Fiduciary of \$193,277 and to his attorneys of \$777,091.

Shockingly, these exorbitant expenses and debts were incurred without paying the Trust's property taxes. (R. 15347-15350, 15431-15433) Wisan now reports that the Trust currently has debt in excess of \$2.1 million—a large portion of which apparently was incurred *after* the court-ordered stand-down in this matter, none of which has been approved by the

Court. (R. 17668-17675) The debt includes payment for the unsuccessful criminal defense of one of Wisan's agents, Isaac Wyler, in "staking out" and changing the locks on occupied residences so they can be made available for non-FLDS and anti-FLDS occupants, in violation of the property and privacy rights of the FLDS occupants. Wisan himself has also been charged for his complicity in these unlawful acts and seeks to charge the Trust for his defense as well. (R. 15332-15336, 15343-15347, 15393-15423)

Despite the claim of waste of assets made at the inception of this action, the assets of the Trust grew under the prior management. In contrast, under the administration of the Special Fiduciary—who was appointed to stop alleged waste—they have been dissipated and consumed at an average exceeding \$1 million per year. (R. 15347-15350) The persons who have benefited most from the Fiduciary's management are those whom the FLDS Church, in the constitutional exercise of its religious autonomy, deemed to be unworthy of continued participation in the Trust and who now actively promote the eradication not only of the Trust but also of the Church. (R. 15343-15347)

Thus, as the case currently stands, the trial court has taken over the Trust and placed it under the allegedly secular administration of a "state-ordained bishop" contrary to the plain language of the Trust and the settlor's clear intent. It has compounded this original error by endorsing decisions that are decidedly not religion-neutral, but that instead discriminate against Appellants and the FLDS Church. It has entertained a request by the Special Fiduciary to sell a unique and irreplaceable Trust asset, the Berry Knoll farm, without receiving evidence or testimony under oath and subject to cross examination.

Yet when the FLDS objected that the Special Fiduciary was decimating the Trust, that he was actively discriminating against FLDS on the basis of religion, and that he was demanding that they pay to finance his self-proclaimed “war” on them, the district court held that leaders and members of the FLDS Church, even if they have a “special interest” in Trust assets distinct from members of the public at large, lack legal standing to challenge any of its actions.

SUMMARY OF ARGUMENT

The trial court erred in denying Appellants’ Motions to Intervene. Appellants meet the requirements for intervention as of right under Rule 24(a). The trial court’s erroneous ruling to the contrary was based on its conclusion that, as a matter of “black letter law,” putative beneficiaries of a charitable trust “have no right to make claims upon such trusts.” The facts proffered by Appellants, which must be accepted as pled for purposes of determining their eligibility to intervene, show that they qualify for an established exception to this “black letter law,” set forth in the Restatement and numerous cases, because they have a particularized connection to the Trust and the specific Trust property, which creates a “special interest” in the Trust distinct from that of members of the public at large.

According to the Restatement of Trusts, a multi-factor approach should be used to determine whether a party has a special interest giving rise to standing to enforce a charitable trust. The relevant factors include (1) extraordinary nature of acts complained of and remedy sought; (2) presence of fraud or misconduct on part of charity or its directors; (3) attorney general’s availability or effectiveness; (4) nature of benefited class and its relationship to charity; and (5) subjective, case-specific circumstances. Restatement (Second) of Trusts § 391.

In this exceptional case, all of the foregoing factors weigh strongly in favor of standing. Unless this Court recognizes Appellants' standing, Appellants and the thousands of FLDS Church members they represent, who are the intended beneficiaries of the Trust, will have no effective voice through party status as the district court determines the fate of their property in what would then become a non-adversary process. That would have both legal and public policy consequences. It is important that this Court correct the trial court's legal error regarding Utah law governing charitable trusts, and particularly so in this context, involving as it does fundamental questions about the nature and extent of state power to reform and administer religious charitable trusts where those with the most particularized, special relationship to unique trust assets strongly object to the non-religious (if not anti-religious) administration.

ARGUMENT

I. THE TRIAL COURT FAILED TO ANALYZE APPELLANTS' MOTIONS TO INTERVENE IN LIGHT OF THE APPLICABLE STANDARDS UNDER RULE 24(a), UTAH R. CIV. P.

Utah Rule of Civil Procedure 24(a) provides that a party may intervene as of right “[u]pon timely application . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.” Rule 24(a), Utah R. Civ. P. While these standards must be carefully applied, the United States Supreme Court has shown that it is appropriate to relax the standards in cases with substantial public interests at stake. *See, e.g., Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129, 132-36 (1967) (allowing numerous intervenors in an antitrust action brought by the United States).

Appellants satisfy the standards of Rule 24(a).

First, Appellants' application was timely. In *Jenner v. Real Estate Servs.*, 659 P.2d 1072, 1073 (Utah 1983), this Court explained that the "timeliness" of an application for intervention must be determined based on the "facts and circumstances of each particular case." *Id.* at 1074. The Special Fiduciary filed his Motion for Relief to Preserve Trust Assets on May 5, 2009. (R. 15126-15128) Prior to that time, the trial court had imposed a stay of litigation so that the parties and interested persons, including Appellants, could seek a negotiated resolution on a number of issues, including the Special Fiduciary's previously proposed sale of Berry Knoll and payment of the Fiduciary's fees and expenses and other Trust obligations. Appellants were present and participated in good faith in those negotiations, culminating in a settlement conference with Judge Paul Cassell on April 22-24, 2009. When by his Motion the Special Fiduciary abruptly announced those discussions had failed and sought to proceed with the sale of Berry Knoll without further hearing, Appellants immediately filed their Motion to Intervene along with substantive motions seeking to block the sale. They therefore acted timely in response to the Fiduciary's Motion and with respect to the specific acts they challenged under the facts and circumstances of the litigation.

Second, Appellants claim "an interest relating to the property or transaction which is the subject of the action." In *Jenner*, this Court held that the focus of the "claim of interest" requirement is that the would-be intervenor claim an interest that "will be adversely affected by the court's disposition of property." *Jenner v. Real Estate Servs.*, 659 P.2d at 1073. Following *Jenner*, the Utah Court of Appeals further defined the "claim of interest" requirement as follows: "The applicant's interest in the subject matter of the dispute must be a direct claim

upon the subject matter of the action such that the applicant will either gain or lose by direct operation of the judgment to be rendered, not a mere, consequential, remote or conjectural possibility of being in some manner affected by the result of the original action.” *Interstate Land Corp. v. Patterson*, 797 P.2d 1101, 1108 (Utah Ct. App. 1991) (citation and internal quotation marks omitted); *see also Commercial Block Realty Co. v. United States Fidelity & Guar. Co.*, 83 Utah 414, 28 P.2d 1081, 1083 (1934) (for a party to intervene, “[h]e must have an interest in the matter in litigation, in the success of either of the parties, or an interest against both.”).

The trial court did not apply these established tests. Instead, it applied without analysis a circular “legal basis” test: “Any ‘claim of interest’ under Rule 24 must have a legal basis; without it, no claimant has a right to a remedy and, therefore, no right to participate in the case as a party.” (R. 16381) The trial court also ruled that the claimed interest must be “legally cognizable,” and that the Attorneys General are “the only individuals with legally cognizable interests.” (R. 16381-16382) These rulings are the core of the trial court’s error.

Of course, Appellants have a “legal basis” for their claim: that because of their longstanding and close relationship with the Trust and its specific landholdings, and because of the other parties’ abject failure adequately to protect those interests, they satisfy the “special interest” exception to the general rule that precludes taxpayers or members of the public generally from suing to enforce a charitable trust. (*See infra*, Argument Section II) The trial court’s creation of a “legal basis” test, its invocation of the “legally cognizable interest” standard, and its conclusion, without analysis, the Appellants lack such an interest simply begs

the question of whether the legal basis Appellants put forward is sufficient. Appellants respectfully submit it is.

At stake here is the disposition of one of the most sacred pieces of property held by the FLDS Church – Berry Knoll. Appellant Bishops have both direct temporal and sacred responsibilities for their congregations. They rely on Berry Knoll to discharge those sacred duties, including providing for the just physical and spiritual wants and needs of their congregations. Similarly, Appellant Church Members have sacred responsibilities for parcels of Berry Knoll and have, for years, dedicated their time, talents, resources, and labor to improving Berry Knoll. They rely on Berry Knoll to discharge their sacred priesthood stewardships to provide for the just wants and needs of their families and other FLDS Church members. If the property is sold to a competing religious group with a competing truth-claim as to its sacred status, there is no question that Appellants’ interest will be adversely affected.

Similarly, Appellants have a unique interest in Berry Knoll and will gain or lose by direct operation of any judgment regarding its sale. Specifically, the Bishops have the sacred priesthood charge, pursuant to scripture and belief,⁶ to ensure that the just wants and needs of their congregations are met. This charge includes providing for both the physical and spiritual needs and wants of the people. According to the tenets of the FLDS faith, the Bishops’ eternal salvation is intimately connected with how well they discharge this duty, and they have relied

⁶ See D & C 51: 13: “And again, let the bishop appoint a storehouse unto his church; and let all things both in money and in meat, which are more than is needful for the wants of this people, be kept in the hands of the bishop.”

in part on Berry Knoll to help them do so. Appellant Church Members have a similarly compelling interest in the subject matter of this dispute. Each has worked to improve Berry Knoll since it was purchased in the 1980s by Thomas and John Steed and later consecrated to the Trust. Each has personally worked to turn over 500 acres of sagebrush into a working, productive farm, removing the sagebrush, developing water, seeding, harvesting, fencing, grazing cattle, irrigating, and producing food and income from Berry Knoll for their families and the FLDS Church membership. They did so pursuant to a priesthood stewardship that each was granted. It is a stewardship they consider sacred. The exercise of their religious beliefs requires that they magnify that stewardship as part of their striving toward not only harmonious communal living but also eternal salvation. Additionally, all Appellants regard Berry Knoll as a sacred site of a future temple. The most sacred FLDS ordinances are conducted in temples, and the land on which temples is situated is similarly sacred. Berry Knoll has provided, and, so long as it is not sold, will continue to provide, for the just physical and spiritual wants and needs of Appellants.

Appellants respectfully submit that by creating and imposing a “legally cognizable interest” test rather than this Court’s established “adverse effect” test, the trial court erred as a matter of law, adopting a standard that is at once devoid of content, overly restrictive and contrary to this Court’s and the Court of Appeals’ precedents.⁷ But as more fully set forth

⁷ Moore’s Federal Practice, discussing the “variety of approaches” and “wide range of terminology” used by various federal courts in discussing the “claim of interest” requirement of Federal Rule 24(a), notes that the federal Fifth Circuit Court of Appeals has referred to the need for a “legally cognizable interest,” while the Sixth Circuit “has ruled that a prospective intervenor need not claim a specific legal or equitable interest.”

below (*see infra*, Argument Section II), even if that were the test, Appellants have satisfied it through the “special interest” exception to the general standing principles that the trial court erroneously imposed as absolute bars.

The trial court’s assertion that the Attorneys General are “the only individuals with legally cognizable interests” is also erroneous. The Utah Code specifically provides: “The settlor of a charitable trust, **among others**, may maintain a proceeding to enforce the trust.” Utah Code Ann. § 75-7-405(3) (emphasis added). The trial court’s ruling ignores this statutory language, and again simply begs the question: what “others,” and under what circumstances? The fact that a particular party has the statutory authority to initiate a lawsuit, and the movant lacks such authority, is not dispositive. Thus the United States Supreme Court, interpreting and applying the analogous Federal Rule, permitted a union member to intervene in a suit brought by the Secretary of Labor to invalidate an election of union members where substantial cause for doubt existed about the adequacy of the Secretary’s representation of union members’ interests. *Trbovich v. United Mine Workers*, 404 U.S. 528, 537-539 and n.10 (1972). This case presents precisely the same justification for intervention by Appellants, and Appellants meet the tests articulated by this Court and the Court of Appeals.

Third, Appellants are “so situated that the disposition of the action may as a practical matter impair or impede [their] ability to protect that interest.” Appellant Bishops’ interest in

Moore’s Federal Practice (3d ed.) § 24.03[2][a], at 24-29 – 24-30. Thus the Sixth Circuit allowed minority students and student groups to intervene in an action challenging an admissions policy that used race as a factor. *Id.* at 24-29 (citing *Gruter v. Bollinger*, 188 F.3d 394, 398-99 (6th Cir. 1999)).

Berry Knoll is the interest of the vast majority of Trust participants. That is, the Bishops represent the people for whom the Trust assets are meant to provide. As the Fiduciary has repeatedly emphasized in the proceeding below, there is no party with standing who represents these Trust participants, even under the terms of the Reformed Trust. That is not, however, what the original settlors intended, or even what the trial court intended when it reformed the Trust.

Moreover, in its Memorandum Decision, the trial court recognized that decisions regarding the disposition of Trust assets should be informed, at least in part, by FLDS priesthood leadership. Thus, “representatives of the FLDS Church (or of local priesthood leadership) may provide non-binding input to the trustees concerning how the faith interprets basic religious principles,” and suggested that the temporary “advisory board” provide a conduit. (R. 3469 ¶ 37, R. 3477 ¶ 58). Despite repeated petitions to the Fiduciary and the anti-FLDS “advisory board,” however, the FLDS voice has been ignored, and at times the Fiduciary has acted in direct opposition to the Bishops’ input. If Berry Knoll were to be sold without hearing, or if a hearing were held participation by Appellants as parties, neither they nor the FLDS people for whom the Trust was established will be able to protect their interest in one of their most sacred assets.

Fourth, and finally, there is no existing party who adequately represents the Bishops’ interest in Berry Knoll, or more importantly, the voices of the thousands of faithful FLDS Church members who look to them for stewardships. The Fiduciary represents a small advisory board comprised mainly of disgruntled, ex-FLDS members whose only interest in Berry Knoll is directly adverse to the FLDS people, and Appellants factual allegations show he

has followed the anti-FLDS position rather than considering the best interests of Trust beneficiaries as a whole. The States' Attorneys General represent the public generally but have no special interest in Berry Knoll, especially the kind of sacred stewardship of which the Bishops maintain responsibility, and again have proven at best ineffectual and at worst openly hostile to the FLDS perspective. Only Appellants truly represent the interest of the vast majority of Trust participants. Unless this Court reverses the trial court's ruling, the FLDS Church's voice will remain unheard, without any conduit for providing the "guidance" required by the terms of the "reformed" Trust itself.

II. THE TRIAL COURT ERRED IN DENYING APPELLANTS' MOTIONS TO INTERVENE FOR LACK OF "STANDING."

The trial court summarily denied Appellants' Motions for lack of standing. (R. 16381-16382) The general proposition relied upon by the trial court is both straightforward and inarguable: a party who has no interest in a charitable trust other than as a taxpayer and a member of the general public to be benefited does not have the requisite interest to either initiate or intervene in an action regarding the administration of a trust or the disposition of its assets. In such circumstances, the Attorney General is given exclusive authority to enforce charitable trusts. Restatement (Second) of Trusts § 391. As the Comment to the Restatement observes, "[s]ince the community is interested in the enforcement of charitable trusts, a suit to enforce a charitable trust can be maintained by the Attorney General of the State in which the charitable trust is to be administered." *Id.*

It is similarly well settled that the mere fact that a person is a possible beneficiary is not sufficient to entitle him to maintain a suit for the enforcement of a charitable trust.

Restatement (Second) of Trusts § 391 comment. The estimable policy behind these general principles is that in the absence of a limitation on standing to enforce charitable trusts, such trusts could be subject to lawsuits by any disgruntled member of the public.

Contrary to the trial court's ruling, however, the general principles conferring jurisdiction to enforce charitable trusts on the Attorney General, and denying standing to members of the public generally, are not absolute. Utah law expressly provides: "The settlor of a charitable trust, **among others**, may maintain a proceeding to enforce the trust." Utah Code Ann. § 75-7-405(3) (emphasis added). The trial court's ruling would have the effect of reading this language out of the statutes governing the enforcement of charitable trusts in Utah, rather than giving it effect, by categorically precluding anyone besides the Attorney General (and perhaps the settlor) from even participating in a proceeding involving a charitable trust.

The real question is not whether, but under what circumstances, "others" can be involved in proceedings involving the charitable trust. The answer lies in the well-recognized "special interest" exception to the Attorney General's enforcement powers. Under this exception, anyone who is "entitled to benefits under the trust that are greater than or different from those to which members of the public are entitled generally." 5 Scott and Ascher on Trusts (5th ed.) § 37.3.10 at 2441. More broadly, "when a charitable trust is for the benefit of a reasonably limited class of persons, **any one or more of them ought to be able to sue** on behalf of themselves and the other members of the class to enforce the trust, **at least insofar as necessary to enjoin or redress a diversion of trust funds to another purpose.**" *Id.* at 2443 (emphasis added).

As opposed to the absolute bar on which the trial court's decision rests, a multi-factor approach is used to determine whether a party has a special interest giving rise to standing to enforce a charitable trust. The relevant factors include (1) extraordinary nature of acts complained of and remedy sought; (2) presence of fraud or misconduct on part of charity or its directors; (3) attorney general's availability or effectiveness; (4) nature of benefited class and its relationship to charity; and (5) subjective, case-specific circumstances. Restatement (Second) of Trusts § 391.

The trial court erred in failing even to consider this settled exception to the general principles on which it rule. Each of the above factors, properly applied in this case, supports Appellants' intervention.

First, the acts complained of consist not of the ordinary, day-to-day administration of the UEP Trust, but of extraordinary proposals to permanently dispose of unique Trust assets, including the Berry Knoll Farm, not for the benefit of any Trust beneficiary but for the payment the Special Fiduciary was not authorized to incur in the first place and has not been authorized to pay. This is a "diversion of trust funds to another purpose" of the type that specifically supports the Bishops' involvement, since they have a unique history and perspective on Trust administration that is not shared by the Attorneys General or the Special Fiduciary.

Second, the acts complained of include not only fraudulent conduct (specifically, fraud on the court in connection with the default judgment obtained in collusion with those who sued the Trust in the first place) but also criminal conduct (specifically, criminal trespass against

FLDS Church members occupying Trust houses). Again, the diversion of trust funds for such purposes is plainly improper and does nothing to address the wants and needs of the people.

Third, the Utah Attorney General has proven singularly ineffective in addressing, let alone remedying, the ongoing mismanagement, and the Arizona Attorney General has not only turned a blind eye but actively assisted. Thus millions of dollars in Trust funds continue to be diverted for a self-described “war” on the Trust beneficiaries, but no one has done anything about it. The Attorneys General initiated this suit claiming the exclusive authority to remedy breaches of fiduciary duty and waste in connection with the assets of a charitable trust, and in doing so achieved control over this religious trust. But now, having attained their political objective, the Attorneys General watch from the sidelines as the Special Fiduciary decimates the trust he is charged with protecting, and they insist on no accountability whatsoever.

Fourth, there is no question that the nature of the beneficiary class here is distinguishable from the public at large and closely related to the purposes of the Trust, both as originally constituted and as “reformed” by the trial court. The beneficiaries of the UEP Trust as originally constituted were limited to those whom the FLDS Church, acting through its duly ordained ecclesiastical representatives (including Appellant Bishops) and in the exercise of its constitutionally-protected ecclesiastical authority, deemed worthy of participation. Even as reformed, the beneficiaries are “limited to those individuals (1) who can demonstrate that they previously made Contributions to either the Trust or the FLDS Church; or (2) subsequent to the date of this Agreement make documented Contributions to the Trust which Contributions are approved by the Board.” (App. A, p.6, § 4.2) Thus the general policy behind not granting standing to any taxpayer or member of the public generally simply is not implicated.

Finally, the subjective, case-specific circumstances warrant Appellants' intervention. Appellants seek to fill a void that has existed in this case since the Utah Attorney General first intervened to protect the Trust from alleged waste. The void has been the lack of an active and constructive voice on behalf of the vast majority of Trust beneficiaries and participants who have been and remain active and faithful members of the FLDS Church.

Appellants Church members can provide that voice. Over 3,000 FLDS Church members signed a declaration last year, under penalty of perjury, attesting to their opposition to the Special Fiduciary's actions and their support for the positions taken by Appellants Willie Jessop, Dan Johnson and Merlin Jessop in this action since they initially appeared back in August 2008 in response to the Fiduciary's original proposal to sell Berry Knoll. A large number of them subsequently traveled to St. George last November for the trial court's scheduled hearing on the proposed sale. Because the trial court had never considered their status as Intervenors with a specific, direct interest in the property at issue, however, those individuals have not heretofore been able to articulate the voice of the people whose views they represent.

Appellant Bishops can also provide that voice from their unique positions as Bishops with responsibility for ministering to the "just wants and needs" of the faithful FLDS Church members who reside in the areas where the UEP Trust lands are located. The Bishops had specific responsibility for ensuring the proper use and disposition of Trust assets under the original Trust, and they maintain that responsibility to the extent they can do so under the Reformed Trust. Although required by the Reformed Trust, however, the Fiduciary has neither

solicited nor considered their input, even when specifically offered (as was the case recently with the delicate matter of use of the FLDS Church cemetery).

Case law addressing the “special interest” identifies two general requirements. First, the persons invoking the exception must be among a “class of potential beneficiaries [that] is sharply defined and limited in number.” *Public Benevolent Trust v. Humane Society of Indianapolis, Inc.*, 829 N.E.2d 1039, 1047 (Indiana Ct. App. 2006). *See also Hooker v. Edes Home*, 579 A.2d 608, 614 (D.C. Ct. App. 1990) (“a particular class of potential beneficiaries has a special interest in enforcing a trust if the class is sharply defined and its members are limited in number”); *Alco Gravure Inc. v. Knapp Foundation*, 64 N.Y.2d 458, 490 N.Y.S.2d 116, 479 N.E.2d 752, 755 (1985) (special interest exception applies to members of a “class of potential beneficiaries [that] is sharply defined and limited in number”). Second, the nature of the challenge the persons bring to the trustee’s action must be of a “fundamental” nature rather than a challenge to the trustee’s normal exercise of discretion. *See also Hooker*, 579 A.2d at 615 (excluding standing for challenges to the “ordinary exercise of discretion on a matter expressly committed to the trustees”); *Alco Gravure*, 479 N.E.2d at 765. Appellants satisfy both of these requirements.

First, Appellants are among a class of beneficiaries that is sharply defined and limited in number such that their interests are separate from those of the public at large. In *Hooker v. Edes Home*, the trustees of a charitable trust sought to close a home for elderly widows, some of whom sought to intervene in a pending probate matter to block the closure. In finding that the widows had standing under the special interest exception, the court first determined that the “class of potential beneficiaries is small and distinct enough that its members appear to have an

interest distinguishable from the public's.” 579 A.2d at 614. Despite the trustee's contention that any woman could qualify as a possible beneficiary and thus defeat the “small and distinct” requirement, the court noted that beneficiaries were limited by gender, income, age, marital status, health, and residency. Based on these factors, the class of potential beneficiaries was sufficiently limited to an identifiable group. *See also Alco Gravure Inc. v. Knapp Foundation*, 479 N.E.2d at 755 (finding the first requirement of the special interest exception met where the persons were employees of a corporation that was entitled to a preference in the distribution of a foundation's assets, the foundation was established to aid the employees and their families, and the trustees of the foundation sought to dissolve the foundation and transfer its assets to a tax-exempt foundation).

Similarly, Appellants are members of a class of potential beneficiaries that is defined and limited in number such that its members have an interest distinguishable from the public's. While the Trust beneficiaries include “those who consecrated their ‘lives, time, talents, and resources’ in addition to those who consecrated real property” to the Trust (R. 3465, ¶ 29), Appellants are among the even more limited number of potential beneficiaries who have specifically dedicated their lives, time, talents and resources to the Trust. Thus they are a distinct group whose interest in the Trust, and the specific property at issue, is distinguishable from that of other potential Trust beneficiaries, and certainly from the general public the Utah Attorney General represents, none of whom satisfy the consecration criteria.

The *Hooker* court recognized it is not the actual number of possible beneficiaries that dictate the “small and distinct” character of the class; rather, it is the nature of the class's limiting factors. Despite the fact that the class of beneficiaries in *Hooker* could grow to a large

and even indefinite number, the limiting factors of gender, income, age, marital status, health, and residency were sufficient to identify the class as “small and distinct.” Here, the factors are similarly limiting as they require voluntary relinquishment of personal ownership of every type: beneficiaries, including Appellants, consecrate not only their lives, time, and talents, but also their resources and real property to the Trust. They therefore satisfy the first requirement for the special interest standing exception.

Second, Appellants challenge an act of the Fiduciary’s that is fundamental and not merely an act of ordinary discretion. In *Hooker*, the court “consider[ed] the nature of the challenge to the trustees’ acts in deciding whether to apply the special interest exception” and differentiated between challenges to recurring issues that fall within the “ordinary exercise of discretion on a matter expressly committed to the trustees” and those issues that “will only be litigated once.” *Id.* at 615, 616. The court determined that the issue of closing the widows’ home was not an issue regarding “simple abuse of discretion by the Trustees,” but that it would be a “fundamental” change that, if successful, would eliminate any “present or potential beneficiary [from] ever be[ing] able to reside in the Edes House.” *Id.* at 616. *See also Alco Gravure*, 479 N.E.2d at 765 (finding the special interest exception met where “the present action concerns not the ongoing administration of a charitable corporation, but the dissolution of that corporation and the complete elimination of the individual’s plaintiffs’ status as preferred beneficiaries.”); *cf. Kania v. Chatham*, 297 N.C. 290, 254 S.E.2d 528, 530 (1979) (denying standing to a student to sue the trustees for not selecting student as scholarship

recipient by finding that the decision was one committed to the normal exercise of discretion of the trustees.)⁸

Similarly, Appellants seek to challenge actions on the part of the Fiduciary that are of the most fundamental type: his diversions of Trust funds for improper purposes, including conduct that has been adjudged to be criminal, as well as permanent disposition of one of their most valuable, sacred landholdings—such actions that fundamentally and ineradicably change the nature of the Trust. Selling Berry Knoll is precisely the type of fundamental act that, as in *Hooker*, “will only be litigated once,” and will eliminate any present or potential beneficiary from ever being able to use the land to farm or produce income for the FLDS people or as the site of a future FLDS temple and thus satisfies the second criterion for the special interest standing exception. As the court explained in *Hooker*, a “fundamental” act of the trustee was one that would eliminate any “present or potential beneficiary [from] ever be[ing] able to reside in the Edes House.” 579 A.2d at 616. That is, it would eliminate any use of the Trust’s most substantial asset. Even more egregious than the act of the trustee in *Hooker*, the

⁸ In *Hooker*, the court stated: “While the sale of trust property-including Edes House itself-is undoubtedly a matter within the Trustees’ discretion, the intent of the Board in selling the House and the planned transfer of its functions to another entity raise substantial questions about the compatibility of this action with the settlor’s intent; and these issues in turn distinguish the proposed action from an ordinary exercise of day-to-day discretion committed solely to the trustees’ judgment. Moreover, the merger proposal places more at stake than just the loss of an opportunity to live at a certain address in Georgetown; it also portends the loss of Edes Home’s independent identity, which may adversely affect the interests of all beneficiaries as a class. . . . [W]hen, as here, the Trustees decide upon a basic change affecting the interests of the entire class of intended beneficiaries-and one alleged to be inconsistent with the settlor’s will-the value of denying representatives of the class access to judicial process to challenge that decision is greatly diminished.” 579 A.2d at 617-18.

Fiduciary's proposal to sell the Berry Knoll farm to a competing religious sect would permanently deprive Appellants and all FLDS faithful of physical *and* spiritual and sacred benefits of the land. Its sale is not an act of "ordinary exercise of discretion."

In short, the effect of the trial court's ruling denying Appellants standing is to terminate their legal right to challenge this act which serves only the Fiduciary's interest of obtaining cash payment at the expense of the beneficiaries whose assets he is charged with protecting. Appellants thus respectfully request this Court to recognize the "special interest" exception, find that they satisfy the exception's criteria, reverse the trial court's ruling and grant them standing to pursue the removal of the Fiduciary and his replacement by a Fiduciary with the full trust and confidence of *all* Trust beneficiaries.

CONCLUSION

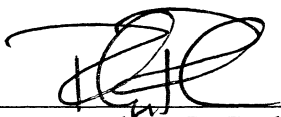
The trial court erred in denying Appellants' Motions to Intervene in the trial court action. Appellants satisfy the requirements of Rule 24(a) of the Utah Rules of Civil Procedure, and they have a "special interest" in the UEP Trust and specific assets currently at issue in the trial court action. Appellants respectfully request that this Court reverse the trial court's denial of Appellants' Motions to Intervene and remand this case to the trial court with the instruction that Appellants be added and allowed to participate as parties.

DATED this 10 day of May. 2010.

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CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing APPELLANTS' BRIEF were served on May 10, 2010 as follows:

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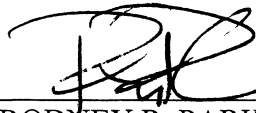
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A handwritten signature in black ink, appearing to read 'R. Parker', is written over a horizontal line.

RODNEY R. PARKER

ADDENDUM

- A. Corrected Ruling and Order on Pending Motions, July 17, 2009
- B. Reformed Declaration of Trust, October 25, 2006
- C. Associated Press, May 26, 2005

ADDENDUM A

FILED DISTRICT COURT
Third Judicial District

JUL 17 2009

SALT LAKE COUNTY

Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
SALT LAKE DEPARTMENT

IN THE MATTER OF THE UNITED EFFORT
PLAN TRUST

CORRECTED
RULING AND ORDER ON PENDING
MOTIONS

Case No. 053900848

Judge Denise Posse Lindberg

Date: July 17, 2009

This matter is before the Court on a number of Motions that have been submitted for decision or are otherwise ripe for determination. They are (1) Willie Jessop's, Dan Johnson's and Merlin Jessop's Motion to Intervene; (2) Lyle Jeffs' and James Oler's Motion to Intervene; (3) Potential Intervenors' Motion to Stay Proceedings, to Replace Special Fiduciary and to Enjoin Further Actions of Special Fiduciary Pending Evidentiary Hearing; (4) Motion for Expedited Discovery; (5) Special Fiduciary's Motion for Relief to Preserve Assets of the Trust; and (6) Arizona Attorney General's Motion for Partial Lift of Stay. Having considered the Motions, the Court rules as follows:

Motions to Intervene and Proposed Intevenor's Other Motions

All the Motions to Intervene are DENIED. The Court has previously determined that individuals who may be potential Trust beneficiaries have no standing to intervene in this action. The memoranda in support of the Motions do not persuade the Court that the proposed Intervenors are uniquely situated or have a particularized interest that satisfies the requirements of Utah Rule of Civil Procedure 24(a). Categorical assertions of interest with respect to Trust property are insufficient to establish a right to intervene under Rule 24(a). What proposed Intervenors must show—which they have not—is that they have a legally cognizable interest in any Trust property. Any “claim of interest” under Rule 24 must have a legal basis; without it, no claimant has a right to a remedy and, therefore, no right to participate in the case as a party.¹

¹ That said, since the inception of this case the Court has agreed to consider comments from various non-parties, including interested potential beneficiaries, and has broadly noticed its hearings to anyone who is interested. Upon request, the Court has also been willing to include such individuals (or their counsel) in its distribution of Court decisions. Those actions by the Court should not be understood as anything more than what they are—a courtesy to interested individuals and as a way of ensuring that the Court receives relevant input on issues affecting the Trust. The Court remains committed to receiving input from non-parties in order for the Court to be fully and fairly informed on the issues it must decide. However, the Court's courtesies should not be misunderstood to imply that the Court recognizes those individuals as having standing in the case.

It is black letter law that potential beneficiaries of charitable trusts have no right to make claims upon such trusts. Because the UEP Trust is a charitable trust, the only individuals with legally cognizable interests are the Utah and Arizona Attorneys General (A.G.s) as representatives of the community, and the Court-designated Special Fiduciary. The Court reaffirms its prior rulings on standing. The Court also relies upon and incorporates by reference the analysis set forth in Section II.a of the Arizona Attorney General's Office's Memorandum in Opposition to Movants' Motion to Stay Proceedings, to Replace Special Fiduciary, and to Enjoin Further Action of Special Fiduciary.² Because the Motions to Intervene must be denied for lack of standing, the proposed Intervenor's remaining motions are also DENIED.

Lifting of Stay/Sale of Berry Knoll property

The Special Fiduciary's Motion for Relief to Preserve Assets of the Trust, and the Arizona A.G.'s Motion for Partial Lift of Stay are GRANTED. During the telephonic status conference held on May 27, 2009, the Court reiterated its position(also expressed during the January 20, 2009 telephonic status conference) that the stay of the proposed sale of the Berry Knoll Farm was predicated upon the timely and unconditional payment of the monthly fees charged for use or occupancy of UEP Trust property. As detailed in the Court's written ruling of June 1, 2009, during its off-the-record meeting with all counsel on November 14, 2008, the Court was asked to stay the proposed sale of the property and grant the various participants a period of time to explore settlement. To induce the Court to take that action, and as a show of "good faith" by the FLDS community, the Court was promised that monthly payments of approximately \$64,000 would be made timely to the Utah A.G. Those payments would then be forwarded to the Special Fiduciary and would be used to meet the Trust's financial obligations. However, at the May 27th telephonic conference the Court was informed that the promised payments had not been forthcoming. In light of that information the Court unequivocally ordered that the unpaid occupancy fees be paid "forthwith." Although the payments were five months delinquent, the Court allowed the FLDS to catch-up their payments, in full, through two equal installments payable on June 1 and June 15, 2009. A few days later, on June 1, 2009, the Court issued a written ruling that restated its Order and clarified that the payments were to be made unconditionally. Furthermore, the Court made it clear that if the terms of its Order were not complied with fully, the stay would be lifted and the Court would promptly proceed to consider the proposal to sell the Berry Knoll Farm.

Notwithstanding the Court's Order, and its further requirement that the Utah A.G. immediately forward the payments to the Special Fiduciary for his use in meeting Trust obligations, the payments were made "under protest." That designation effectively rendered the funds unusable by the Special Fiduciary. Further, the Utah A.G. agreed with FLDS representatives that he would not disburse the second payment without FLDS approval. That side agreement is inconsistent with the Court's prior Orders. The Court concludes that the promises and representations upon which the stay of the sale and litigation were predicated have not been honored. As a result, badly-needed funds have not been available

²The Special Fiduciary also filed an opposition, asserting that the Trust lacked sufficient funds to defend against the Motion. The Special Fiduciary requested a hearing to resolve any factual disputes underlying the motions. Because the Motions are resolved on the issue of standing, there are no factual issues to resolve.

to meet the Trust's pressing obligations. Therefore, within two business days of the issuance of this Ruling and Order, the Utah A.G. is ordered to deposit with the Court all of the funds received to date from/or on behalf of the FLDS. The Court will distribute the funds to the Trust to meet its obligations.

Additionally, the Court has no choice but to proceed promptly to set a hearing on the proposed sale of the Berry Knoll Farm. The hearing will be held on Wednesday, July 29, 2009, from 9:00 a.m. to noon, in courtroom W-46 at the Matheson Courthouse. Because of the limited seating available in the courtroom, and in order to avoid potential disruption of other court hearings at the Matheson Courthouse that day, a decorum order for that hearing will be forthcoming shortly.

Settlement proposals

The Court has received, and is in the process of reviewing, various settlement proposals that have been filed. The Court is also reviewing the comments received by the June 30th deadline. Although the Court's review is not yet complete, it is apparent that there remain widely divergent views on what the appropriate course of action should be. Because of their roles as community representatives in this action, the fact that the Utah and Arizona A.G.s have taken such divergent positions regarding the viability of any settlement is of significant concern. The Court is studying all submissions and considering its options; the Court will announce its decision(s) as promptly as possible.


ORDER

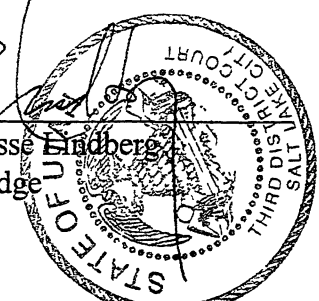
For the reasons stated in this Ruling and Order, the various pending Motions to Intervene and all other motions brought by proposed Intervenors, are hereby DENIED.

A hearing on the sale of the Berry Knoll property will take place on Wednesday July 29, 2009, between 9:00 a.m. and noon, in W-46 of the Matheson Courthouse in Salt Lake City.

Within ~~48 hours~~ ^{two business days} of the issuance of this Ruling and Order, the Utah A.G. shall deposit with the Court all funds received from/on behalf of the FLDS in connection with this action. The Court will assume responsibility for disbursal of the funds to the Special Fiduciary in order to ensure that the Trust's financial obligations are addressed.

SO ORDERED BY THE COURT this 17th day of July, 2009.


Judge Denise Posse Lindberg
District Court Judge



ADDENDUM B

CALLISTER NEBEKER & McCULLOUGH
JEFFREY L. SHIELDS (2947)
MARK L. CALLISTER (6709)
ZACHARY T. SHIELDS (6031)
MICHAEL D. STANGER (10406)
Zions Bank Building Suite 900
10 East South Temple
Salt Lake City, UT 84133
Telephone: (801) 530-7300
Facsimile: (801) 364-9127

FILED DISTRICT COURT
Third Judicial District

OCT 25 2006

CLERK OF COURT SALT LAKE COUNTY

By [Signature] Deputy Clerk

Attorneys for Plaintiff Bruce R. Wisan, as the Court-Appointed
Special Fiduciary of the United Effort Plan Trust

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

IN THE MATTER OF THE UNITED EFFORT
PLAN TRUST, (Dated November 9, 1942,
Amended April 10, 1946, and Amended and
Restated on November 3, 1998); and its,
TRUSTEES, including known trustees
TRUMAN BARLOW, WARREN JEFFS,
LEROY JEFFS, WINSTON BLACKMORE,
JAMES ZITTING and WILLIAM E. JESSOP
a/k/a WILLIAM E. TIMPSON and DOE
TRUSTEES 1 THROUGH IX.

REFORMED DECLARATION OF
TRUST OF THE UNITED
EFFORT PLAN TRUST DATED
OCTOBER 25, 2006

Civil No. 053900848

Judge Denise P. Lindberg

REFORMED
DECLARATION OF TRUST
OF THE
UNITED EFFORT PLAN TRUST

This Reformed Declaration of Trust of The United Effort Plan Trust is effective the 25th day of October, 2006.

RECITALS

A. The United Effort Plan Trust Agreement was originally executed effective November 9, 1942. On the 3rd day of November, 1998, the Amended and Restated Declaration of Trust of The United Effort Plan Trust was executed. The 1998 Restatement amended in total and restated the 1942 Trust Agreement.

B. The 1942 Trust Agreement and The 1998 Restatement were executed and the Agreement is executed for the purpose of establishing an irrevocable trust qualified as a charitable trust as the term is defined in the Utah Code and under applicable common law.

C. Pursuant to a Memorandum Decision dated December 13, 2005 entered by the Honorable Denise Posse Lindberg, Judge of The Third Judicial District Court in and for Salt Lake County, State of Utah, the 1998 Restatement was to be reformed. This Agreement is the Reformed Declaration of Trust of The United Effort Plan Trust as directed by the Court.

D. Assets were originally contributed to the Trust as described in the 1942 Trust Declaration and the 1998 Restatement. Additional assets have been contributed to the Trust in the Trust's name and the name of former trustees. All Trust Property, including subsequently acquired assets, shall be held, managed, and distributed in accordance with the terms of this Agreement.

E. This reformation of the Trust is guided by the following three principles:

- E.1 The Trust is a charitable trust; the beneficiaries of the Trust are large in number and constitute a definite class, however the beneficiaries within that class are indefinite and the Trust Property shall be devoted to providing for the just wants and needs of the beneficiaries which purpose is beneficial to the community.
- E.2 The structure of the Trust shall not benefit, advocate or facilitate illegal practices including, but not limited to, polygamy, bigamy, or sexual activity between adults and minors.

- E.3 The reformation and administration of the Trust shall be based on neutral principles of law; the reformation shall not be based on religious doctrine or practice and shall not attempt to resolve underlying controversies over religious doctrine. The reformation shall allow for ecclesiastical input of a non-binding nature and a mechanism - independent of priesthood input - for establishing benefits under the Trust.

AGREEMENT

Therefore, pursuant to the Order of the Court, The Amended and Restated Declaration of Trust of The United Effort Plan Trust is reformed in its entirety to read as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 1942 Trust Agreement means The United Effort Plan Trust Agreement originally executed effective November 9, 1942.

Section 1.2 The 1998 Restatement means The Amended and Restated Declaration of Trust of The United Effort Plan Trust executed the 3rd day of November, 1998.

Section 1.3 Agreement means this Reformed Declaration of Trust of The United Effort Plan Trust dated effective the ____ day of October, 2006.

Section 1.4 Annual Report shall have the meaning set forth in Section 5.6.1(b).

Section 1.5 Board means the Board of Trustees of the United Effort Plan Trust as determined in Article 5. Except as otherwise set forth herein, whenever the Board is authorized or required to take any action, such action shall require the affirmative vote of a majority of the Trustees as set forth in Section 5.1.8.

Section 1.6 Conflicting Interest shall have the meaning set forth in Section 5.1.11(b).

Section 1.7 Contribution or Contributions shall have the meaning set forth in Section 3.2.

Section 1.8 Corporate Fiduciary means an institutional Fiduciary appointed pursuant to this Agreement. Whenever a Corporate Fiduciary is appointed hereunder, the appointment shall refer to the Corporate Fiduciary as constituted at the time of the appointment and each successor entity to the corporation however succession may occur. Succession as used herein

shall include, but not be limited to, all forms of corporate reorganizations recognized by Section 368 of the IRC Code.

Section 1.9 Court means the Court having authority over Case No. 053900848 of The Third Judicial District Court in and for Salt Lake County, Utah or its successors.

Section 1.10 Designated Recipients shall have the meaning set forth in Section 8.8.1.

Section 1.11 Disclosing Trustee shall have the meaning set forth in Section 5.1.11(a).

Section 1.12 Electronic Communication shall have the meaning set forth in Section 5.1.9(d).

Section 1.13 Fiduciary means any person who has a fiduciary duty, as defined by statute or common law or pursuant to this Agreement to the Trust, any trust created hereunder or to a Trust Participant, including, but not limited to, Trustees.

Section 1.14 FLDS Church means the Fundamentalist Church of Jesus Christ of Latter-day Saints.

Section 1.15 Individual Fiduciary means an individual appointed as a Fiduciary pursuant to this Agreement. The appointment shall refer to the specified individual. Except as specifically set forth herein otherwise, the office of an Individual Fiduciary may not voluntarily or involuntarily be transferred by or to any other individual.

Section 1.16 IRC Code means the Internal Revenue Code of 1986 as amended, or corresponding provisions of subsequent federal tax laws. When the Fiduciaries of the Trust are directed to act in accordance with the IRC Code, they should give appropriate weight to the Internal Revenue Service's regulations, revenue rulings and private letter rulings as well as court decisions interpreting the IRC Code. However, this direction shall not be interpreted to preclude the Fiduciaries from contesting the position of the Internal Revenue Service or any court as to the proper interpretation of a IRC Code Section provided such contest is undertaken by the Fiduciaries in good faith.

Section 1.17 Minutes shall have the meaning set forth in Section 5.1.10.

Section 1.18 Person, where appropriate, shall refer to either individuals or entities (including, but not limited to, corporations, partnerships, estates and trusts) or both.

Section 1.19 Reformed Declaration of Trust means this Reformed Declaration of Trust of The United Effort Plan Trust dated effective the ____ day of October, 2006.

Section 1.20 Reports shall have the meaning set forth in Section 8.8.

Section 1.21 Required Disclosure shall have the meaning set forth in Section 5.1.11(c).

Section 1.22 Spendthrift Trustee or Spendthrift Trustees means those persons appointed as trustees of the spendthrift trusts created pursuant to Section 6.8.

Section 1.23 Sub S Stock shall have the meaning set forth in Section 5.21.7.

Section 1.24 Trust means the trust created by the 1942 Trust Declaration as amended and restated in the 1998 Restatement and as reformed by this Agreement.

Section 1.25 Trust Participants shall have the meaning set forth in Section 4.2.

Section 1.26 Trust Property shall refer to all types of assets which may be owned from time to time by the Trustees on behalf of the Trust, including but not limited to tangible and intangible assets and real and personal property.

Section 1.27 Trustee or Trustees means those persons appointed as Trustees of this Trust.

Section 1.28 Utah Code. Utah Code as used herein shall mean the Utah Code of 1953, as amended.

ARTICLE 2 CONTINUATION OF TRUST

Section 2.1 Trust Name. The Trust shall continue to be known as **The United Effort Plan Trust**, and shall operate under such other name(s) as the Board may from time to time designate.

Section 2.2 Trust Term. This Trust shall continue in perpetuity or for the longest time period allowable pursuant to statutory or common law unless the Board determines that the purposes for the Trust have been fulfilled or the Trust cannot feasibly operate under its stated purposes, at which time the Board shall terminate the Trust and distribute all of the Trust Property consistent with the purposes of the Trust as set forth in Article 4. To the extent the rule of perpetuities applies, neither this Trust, any trust created by this Trust nor any trust created pursuant to the exercise of a special power of appointment granted pursuant to this Trust, shall continue beyond the period set forth by the Rule against Perpetuities as applied under the laws of the state having jurisdiction of the trust in question. Upon the expiration of the Rule against Perpetuities period, the Board, the trustees of any trust created by this Trust and the trustees of

any trust created pursuant to the exercise of a special power of appointment granted pursuant to this Trust shall terminate the trust and shall distribute the Trust Property consistent with the purposes of the Trust as set forth in Article 4. If the permissible distributees' relative interests are uncertain, the Board shall distribute the Trust Property to the permissible distributees as the Board deems to be consistent with the intent of this Trust Agreement as stated herein. In the event the Board is uncertain as to the intent, the Board may seek instructions from a court having jurisdiction over the administration of the trust.

Section 2.3 Irrevocable. Except as otherwise provided herein, this Reformed Trust Agreement is irrevocable and neither the Board, any Trust Participant nor any other person shall have the power to amend the Reformed Trust Agreement, except upon further order of a court having jurisdiction over the administration of the trust as set forth in Section 8.3.

Section 2.4 Distinct Organization. The Trust is separate and distinct from the United Effort Plan, a religious effort, the FLDS Church, as well as any other religious efforts, objectives, doctrines or organizations.

ARTICLE 3 TRANSFERS IN TRUST

Section 3.1 General Provisions. The assets currently held by the Trust and any assets which subsequently may be transferred to or received by the Trustees shall be held by the Trustees in trust and shall be administered upon the terms and conditions and for the purposes herein set forth.

Section 3.2 Contributions. For purposes of this Trust, contributions to the Trust may be in the form of real and personal property of any nature and may also include consecrations of time, talents, money and materials and improvements to Trust Property (individually a "Contribution" and collectively the "Contributions").

Section 3.3 Acceptance of Transfers and Contributions. All transfers and Contributions to the Trust shall be accepted only if they are without reservation or claim of right and/or ownership by the contributor. Additionally, any and all improvements made on or to Trust Property shall become the sole property of the Trust without reservation of right or ownership. The Board shall have the right to accept or reject any Contributions to the Trust.

ARTICLE 4 PURPOSES AND PARTICIPANTS

Section 4.1 Purposes. The Trust shall be administered and treated as a charitable trust as the term is defined in the Utah Code and applicable common law. Trust Property shall be

held, used and distributed to provide for Trust Participants, as defined below, according to their wants and their needs, insofar as their wants are just. Just wants and needs concern primarily housing, with the goal of securing residences for Trust Participants. Secondly, just wants and needs concern education, including scholarships, occupational training and economic development. Just wants and needs may also include food, clothing, medical needs and other items within the discretion of the Board. Trust Property may also be held, used and distributed for community development, including, but not limited to, community buildings and places, schools, parks and cemeteries, etc.

Section 4.2 Trust Participants. Individuals who may be privileged to receive benefits from the Trust ("Trust Participants") shall be limited to those individuals (1) who can demonstrate that they had previously made Contributions to either the Trust or the FLDS Church; or (2) who subsequent to date of this Agreement make documented Contributions to the Trust which Contributions are approved by the Board. Trust Participant status shall not be based upon the value of the property or services contributed and shall be interpreted liberally consistent with the charitable purpose of the Trust.

Section 4.3 Use of Trust Property. The Board in its discretion shall distribute all, part or none of the net annual income of the Trust to fulfill the purposes of this Trust. The Board may also invade the principal of the Trust to fulfill the purposes of the Trust.

Section 4.4 Discretion in Fulfillment of Purposes. The Board shall have full discretion to fulfill the purposes of this Trust as the Board deems appropriate.

ARTICLE 5 BOARD OF TRUSTEES

Section 5.1 Board.

5.1.1 Composition. The Board shall consist of an odd number of Trustees no fewer than five and no more than nine Trustees. Trustees should have a demonstrated ability to act independently and in the best interest of the Trust and be committed to the general principles set forth in the Recitals and the Purposes as set forth in Article 4.

5.1.2 Appointment. The Initial Board shall be appointed by the Court at such time as the Court determines is appropriate. Until the Board receives complete authority for the administration of the Trust, the Court shall retain oversight over the Trust and shall determine how and by whom the Trust Property shall be administered and the compensation of those persons administering the Trust. The Court may transfer duties and authority to the Board in stages. The Court may assign to the Board some, all, or none of the duties of Trust administration at such times as the Court determines the Board can effectively administer such

assigned duties. Unless otherwise ordered by the Court, duties and authority previously granted to the Special Fiduciary by the Court shall be retained by the Special Fiduciary until the Court transfers such duties and authority to the Board.

5.1.3 Additional or Replacement Trustees. Once the initial Board is appointed, additional or replacement Trustees, shall be appointed by the Board. If a Trustee fails or ceases to serve or is removed as a Trustee, a replacement Trustee shall be appointed by the Board within 90 days of such vacancy. All persons who consent to serve as additional or replacement Trustees, shall accept in writing the office of Trustee and the fiduciary duties imposed on Trustees of the Trust.

5.1.4 Failure to Replace Trustee. In the event that a replacement Trustee is not appointed by the Board within 90 days of a vacancy, a Trustee or Trust Participant may petition a court of proper jurisdiction to name a replacement Trustee.

5.1.5 Term. With the exception of the Initial Board, Trustees shall serve for six-year terms. The initial Trustees shall be divided into three groups as determined the Court. The term for the Initial Trustees comprising the first group shall expire after two years, of the second group after four years and of the third group after six years, so that approximately one third of the Trustees shall be appointed every second year. Additional Trustees shall be included in the group containing the fewest members. A replacement Trustee shall serve for the remaining term of the replaced Trustee. Trustees may serve multiple, but not consecutive terms, except as otherwise ordered by the Court.

5.1.6 Removal. A Trustee may be removed upon a showing of good cause, upon the affirmative vote of at least 2/3rds of the Trustees. Good cause shall be the failure of the Trustee to fulfill his or her obligations under the Agreement or violation of other fiduciary obligations imposed by the Agreement or by law. Removal of a Trustee shall be by written notice delivered to the removed Trustee, effective at the date and time set forth in the Notice.

5.1.7 Compensation. The Trustees will initially be compensated on a per meeting basis, regardless of the length of the meetings at the rate of One Hundred Seventy-Five Dollars (\$175.00) per meeting. Compensation of the Trustees may only be changed by the unanimous vote of the Trustees. Compensation shall in no event exceed that which would ordinarily be paid for like services by charitable enterprises under like circumstances. Travel expenses for Trustees will be reimbursed at the same rate paid to Utah State employees for in-state business travel. Whenever possible, the Board will minimize the costs of travel by using available technology, by selecting meeting sites that will most effectively control travel costs, or by any other appropriate means.

5.1.8 Meetings, Quorums and Voting.

- (a) The Board shall meet at least quarterly, but shall meet as often as necessary to effectively administer the Trust. The scheduling and agenda of the meetings shall be set by the President.
- (b) A majority of the Trustees shall constitute a quorum for the transaction of business at any meeting of the Board. If less than a quorum is present at a meeting, the Trustees present may adjourn the meeting from time to time without further notice.
- (c) Except as specifically set forth otherwise, the act of a majority of the Trustees shall be the act of the Board.
- (d) The Board may permit any Trustee to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Trustees participating may hear each other during the meeting. Any Trustee participating in a meeting by such means is considered to be present in person at the meeting.
- (e) No Trustee may vote by proxy.
- (f) Written notice stating the place, day, and hour of both regular and special meetings, and in the case of a special meeting, the purpose or purposes for which the meeting is called, which shall be delivered not less than five (5) nor more than thirty (30) days before the date of the meeting in accordance with the provisions of Section 5.1.12, to each Trustee.

5.1.9 Action Without a Meeting.

- (a) Any action required or permitted to be taken at a Board meeting may be taken without a meeting if each and every Trustee in writing either:
 - (i) votes for the action; or
 - (ii) votes against the action or abstains from voting and waives the right to demand that action not be taken without a meeting.

- (b) Action is taken under this Section only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the Trustees then in office were present and voted.
- (c) An action taken pursuant to this Section may not be effective unless the President receives writings describing the action taken or otherwise satisfying the requirements of Subsection (a) signed by all Trustees which writings are not revoked pursuant to Subsection (g).
- (d) The writing described above may be received by electronically transmitted facsimile or other form of wire or wireless communication ("Electronic Communication") providing the President with a complete copy of the document, including a copy of the signature on the document. Within a reasonable time after execution, the Trustee providing the Electronic Communication shall deliver to the President an originally executed writing. For purposes of Subsections (f) and (g), the writing shall be deemed received by the President when the Electronic Communication is received.
- (e) A Trustee's right to demand that action not be taken without a meeting shall be considered to have been waived if the President receives a writing satisfying the above requirements that has been signed by the Trustee and not revoked pursuant to Subsection (g).
- (f) Action taken pursuant to this Section shall be effective when the last writing necessary to effect the action is received by the President, unless the writings describing the action taken set forth a different effective date.
- (g) Any Trustee who has signed a writing pursuant to this Section may revoke the writing by a writing signed and dated by the Trustee, describing the action and stating that the Trustee's prior vote with respect to the writing is revoked if the revocation is received by the President before the last writing necessary to effect the action is received by the President.

- (h) Action taken pursuant to this Section has the same effect as action taken at a meeting of the Board and may be described as an action taken at a meeting of the Board in any document.

5.1.10 Minutes of Board Meetings and Resolutions on Actions Without Meetings. Except as otherwise set forth in this Section 5.1.10, Minutes of the Meetings of the Board and copies of Resolutions of the Board taken Without a Meeting (collectively the "Minutes") shall be made available as set forth in Section 8.8 within ten (10) days after approval of the Minutes. Information contained in the Minutes which is determined by the unanimous vote of the Trustees to be sensitive need not be made available, however, a notation shall be made in the minutes that sensitive information has been omitted.

5.1.11 Conflicts of Interest.

- (a) Any Trustee who has a potential Conflicting Interest in any decision being considered by the Board (the "Disclosing Trustee") shall disclose such conflict by making a Required Disclosure prior to any action by the Board.
- (b) A "Conflicting interest" with respect to the Trust means the interest the Disclosing Trustee has respecting a transaction effected or proposed to be effected by the Trust if the Disclosing Trustee knows that the Disclosing Trustee or a member of the Disclosing Trustee's family is either a party to the transaction or has a beneficial financial interest in, or is so closely linked to, the transaction and the transaction is so financially significant to the Disclosing Trustee or a member of the Disclosing Trustee's family that the interest would reasonably be expected to exert an influence on the Disclosing Trustee's judgment.
- (c) "Required disclosure" means disclosure by the Disclosing Trustee of the existence and nature of the Conflicting Interest; and all facts known to the Disclosing Trustee respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.
- (d) The Board, in its discretion, shall have the right to require the Disclosing Trustee to recuse himself or herself from voting on that transaction.

5.1.12 Notice.

- (a) All notices provided for by this Agreement shall be made in writing (1) either by actual delivery of the notice into the hands of the parties thereunto entitled, (2) by facsimile transmission, (3) by electronic delivery with confirmed receipt, or (4) by the mailing of the notice in the U.S. mails to the address appearing on the books of the Trust or given by the person entitled to notice to the Trust for the purpose of notice, certified mail, return receipt requested (postage prepaid). If no address for a person entitled to notice appears on the Trust's books or is given by such person, notice shall be deemed to have been given if sent by mail to the last address for such person, known to the Trust.
- (b) Notice shall be deemed to be received in case (1) on the date of its actual receipt by the party entitled thereto, in case (2) and (3) the notice shall be considered delivered upon completion of the transmission by the sender and the receipt by the sender of an affirmative indication that the message has been successfully transmitted, and in case (4) three (3) days after the date when deposited in the United States mail.
- (c) If any notice addressed to a person at the address of such person appearing on the books and records of the Trust is returned to the Trust by the United States Postal Service marked to indicate that the United States Postal Service cannot deliver the notice to the person at such address, all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available to the person upon written demand of the person at the principal executive office of the Trust for a period of one (1) year from the date of the giving of such notice.
- (d) A certificate or an affidavit of the mailing, transmission or other means of giving any notice of any meeting shall be executed by the President and shall be filed and maintained in the minute book of the Trust.

5.1.13 Waiver of Notice. If notice is required to be given to a Trustee, a waiver in writing signed by the person or persons entitled to the notice, whether made before or after the time for notice to be given, is equivalent to the giving of notice.

Section 5.2 General Powers and Duties.

5.2.1 Except as otherwise set forth herein, the Board shall have all power necessary to fulfill its responsibilities under this Trust Agreement and specifically those powers set forth in Utah Code Sections 75-7-813 and 814, as it now exists and as it may be amended in the future. The Board shall have: (1) the power to hire employees and/or independent contractors to handle the administrative duties of the Trustees, (2) the power to adopt bylaws to govern the administration of the affairs of the Trustees, (3) the power to delegate its responsibilities to individual Trustees or committees, and (4) the power to act by written approval of the Board without the necessity of a formal meeting, (5) to invest Trust Property in all types of investments permissible by law for investment of Trust Property including, but not limited to, limited partnerships, limited liability companies, etc., (6) the power to manage the Trust Property, and (7) the power to employ attorneys, accountants, brokers and other agents at the expense of the Trust and such expenses shall not be deducted from any Trustee's reasonable fee for services herein.

5.2.2 In addition to all of the powers granted to the Trustees pursuant to this Trust Agreement and by law, the Board shall have the power to establish separate organizations, including profit and non-profit entities, if necessary, to carry forth the necessary administration and purposes of the Trust.

5.2.3 It shall be the duty and responsibility of the Board to determine how best to fulfill the purposes of the Trust and specifically how to invest, administer and distribute the Trust Property.

5.2.4 To the extent that the Trust's Purpose conflicts with provisions of the Utah Uniform Prudent Investor Act, Utah Code Title 75, Chapter 7, Part 9, the Board shall be relieved of any obligation under that Act.

Section 5.3 Specific Powers and Duties. Without limiting the authority conferred by Utah Code Sections 75-7-813, the Board may:

5.3.1 determine Trust Participants;

5.3.2 determine the benefits available, if any, to Trust Participants;

5.3.3 determine the terms and conditions governing occupancy and use of Trust Property and, where appropriate, enter into occupancy agreements with individual Trust Participants;

5.3.4 manage all other aspects of Trust Property, including collecting taxes, resolving occupancy claims and disputes;

5.3.5 distribute or sell Trust Property to settle legal or equitable claims brought against the Trust or for any other legitimate Trust purpose;

Section 5.4 Investments. The Board may purchase, acquire or retain any kind of investment asset which a trustee may hold under the law of the jurisdiction in which the Trust is being administered. The Board's actions in managing the Trust Property shall be measured by the overall performance of the Trust Property, and not by the performance or lack of performance of individual assets.

Section 5.5 Types of Transactions. The Board may sell, exchange, lease, pledge, mortgage, transfer, convert, or otherwise dispose of or grant options with respect to any Trust Property. The Board may enter into leases and contracts even though the term of the lease or contract may extend beyond the period fixed by statute for leases or contracts made by fiduciaries or beyond the duration of any trust hereunder.

Section 5.6 Duty to inform and report.

5.6.1 Notwithstanding the provisions of Utah Code Section 75-7-811, the Board shall only be required to make the following reports:

- (a) Such reports as are requested by the Court or as reasonably required by any court having jurisdiction over the administration of the trust;
- (b) At least annually and at the termination of the Trust a report of the Trust Property, liabilities, receipts, and disbursements, including the amount of the Trustees' compensation or a fee schedule or other writing showing how the Trustees' compensation was determined, a listing of the Trust Property and, if feasible, their respective market values (the "Annual Report").

5.6.2 The Annual Report shall be made available as set forth in Section 8.8 within 90 days of the end of each fiscal year of the Trust.

Section 5.7 Borrowing. The Board may borrow money from any source for the benefit of the Trust, and as security for any such loan, may mortgage or pledge any Trust Property. A Trustee may loan money to the Trust with the approval of the Board provided the terms of the

loan are no more beneficial to the Trustee than those terms that would be charged by a commercial lender in the community in which the Trust is being administered.

Section 5.8 Management. The Board may vote any shares of stock or other securities, membership or partnership interests, etc. held by the Trustees on behalf of the Trust, in person or by general or limited proxy. The Board may execute, rescind, terminate or amend any voting trust agreement. If the Trust becomes a party to a voting trust agreement, the Board may deposit securities or other property with a trustee or accept securities as a trustee (whether or not the voting trust agreement extends beyond the duration of the trust). The Board may consent, directly or through a committee or agent, to any recapitalization, reorganization, consolidation, merger, dissolution or liquidation of any corporation, partnership, limited liability company or association in which the Trust has an interest. The Board may make any payments, assignments, or subscriptions and take any other steps which the Board may deem necessary or proper to enable the Trust to obtain the benefits of any of these transactions.

Section 5.9 Insurance. The Board may purchase and retain life, fire, rent, title, liability or casualty insurance or any other insurance as the Board deems advisable under the circumstances.

Section 5.10 Principal and Income. The Board shall have discretion to determine what is principal or income and to apportion and to allocate its receipts, taxes and other expenses and charges between the two. Except as otherwise determined by the Board, the Board shall allocate receipts and disbursements between principal and income in accordance with the Utah Revised Uniform Principal and Income Act (Utah Code Section 22-3-101 et al.). The Board does not need to maintain a separate income account. The Board may accumulate income notwithstanding the provisions of Sections 665 through 667 of the IRC Code. The Board may treat accumulated income as principal.

Section 5.11 Tax Elections. The Board shall have the power to make tax elections as the Board deems advisable for the benefit of the Trust and the Trust Participants.

Section 5.12 Settlement of Claims. The Board shall have the power to commence or defend, at the expense of the Trust, such litigation with respect to the Trust or any Trust Property as the Board considers advisable. The Board shall have power to renew, assign, alter, extend, compromise, release, with or without consideration, or submit to arbitration, obligations or claims held by or asserted against the Trust.

Section 5.13 Reserves for Amortization, Obsolescence, Depreciation and Depletion. The Board may charge to operating expense all current costs of amortization, obsolescence, depreciation and depletion of any Trust Property and may provide adequate reserves for amortization, obsolescence, depreciation and depletion.

Section 5.14 Agents. The Trust may hold investments in the name of a nominee or a substitute trustee and may employ brokers, agents, attorneys and custodians for any Trust Property.

Section 5.15 Reimbursement of Advances. The Board may reimburse a Trustee out of the Trust for all advances made for the benefit or protection of the Trust or the Trust Property and for all expenses, losses and liabilities incurred in connection with the administration of the Trust not resulting from a breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries.

Section 5.16 Distributions in Kind. The Board may make any distributions or payments in kind, or cause any shares to be composed of cash, property or undivided fractional interests in property different in kind from any other share. The Board shall determine the value of any distributions in kind. The Board may acquire assets for distribution in kind to the Trust Participants.

Section 5.17 Trust Expenses. The Board may pay from either income or principal of the Trust the expenses of administering the Trust; however, the Board shall allocate Trust expenses between income and principal in accordance with Section 5.10 above.

Section 5.18 Payments to Minors or Legally Disabled Trust Participants.

5.18.1 In the event the Board desires to make distribution to a Trust Participant who is under the age of twenty one (21) years, the Board may distribute the distribution to a custodian for that Trust Participant under a Uniform Gifts or Transfers to Minors Act.

5.18.2 In the event the Board desires to make distribution to a Trust Participant who is under a legal disability other than minority, the Board may make distribution by one or more of the following methods: (a) by making distribution to the Trust Participant's legal Guardian or Conservator; (b) by making distribution on behalf of the Trust Participant to any one with whom the Trust Participant resides; (c) by making distribution to third parties in discharge of the Trust Participant's bills or debts, including bills for premiums on insurance policies; or (d) by making distribution to the Trust Participant directly.

Section 5.19 Consolidation. The Board may consolidate the Trust Property or of any trust hereunder with any other trust provided proper records are kept of the Trust Property allocable to each trust and there will be no unfavorable tax consequences as a result of consolidation. In this regard, the Board is instructed to carefully review the possibility of unfavorable generation skipping tax consequences as a result of a consolidation of separate trusts. If the Board consolidates separate trusts, the Board shall not be required to physically divide any of the investments or any other property unless necessary or deemed advisable for the

purpose of distribution. Instead, the Board may keep any part of the consolidated trusts in one or more funds in which the separate and distinct trusts shall have undivided interests.

Section 5.20 Acting in Other Jurisdictions. If for any reason the Board is required or deems it advisable to take any action in any jurisdiction in which it is illegal or inadvisable for the Board to act in that jurisdiction, the Board may appoint another person or corporation to act in the other jurisdiction as the Board deems advisable. The person appointed shall be required to accept the office of Trustee and the fiduciary duties imposed on Trustees of the Trust.

Section 5.21 Miscellaneous Trustee Provisions. The Board shall have the following powers:

5.21.1 Lending Money. To lend money to any person subject to such security and interest requirements as determined by the Board.

5.21.2 Withholding Distributions. To withhold Trust Property from distribution without payment of interest, if at the time for distribution of the Trust Property the Board determines that the Trust Property may be subject to conflicting claims, to tax deficiencies, or to liabilities, contingent or otherwise, which properly must be resolved before distribution can be made.

5.21.3 Purchase Bonds at Premium. To purchase bonds and to pay premiums in connection with the purchase as the Board, in its discretion, considers advisable; provided, however, that the Board shall treat part of the interest payments on the bond, or sales proceeds if necessary, as the repayment of principal as is reasonable under the circumstances.

5.21.4 Purchase Bonds at Discount. To purchase bonds at a discount from face value as the Board, in its discretion, considers advisable; provided, however, that the Board shall treat part of the return of principal as income as is reasonable under the circumstances.

5.21.5 Proration. Upon the termination of any trust, the Board shall distribute undistributed, accrued income to the Trust or the Trust Participants as determined by the Board.

5.21.6 Partnership or Limited Liability Company. In addition to any other rights granted to the Board, the Board shall have the right to authorize the Trust to enter into general or limited partnership agreements, to execute Certificates of General or Limited Partnership and/or to serve as a General and/or Limited Partner. The Board shall also have the right to authorize the Trust to enter into limited liability company agreements, to execute the Articles of Organization thereof and to serve as a member and/or manager of such companies.

5.21.7 S Corporation Stock. If this Trust holds stock in an S Corporation, as that term is defined by IRC Code Section 1361 (hereinafter "Sub S Stock"), the Board, in the Board's sole discretion, may reform the Trust, or any sub-trust into which the Sub S Stock is or may be transferred, establish separate trusts or divide existing trusts so that such trust, as reformed, is qualified as a Subchapter S corporation shareholder Trust under IRC Code Section 1361.

Section 5.22 Delegation.

5.22.1 The Board may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The Board may not delegate the Board's discretionary authority to determine the amount, timing and recipient of distributions from the Trust. The Board shall exercise reasonable care, skill, and caution in:

- (a) selecting the agent;
- (b) establishing the scope and terms of the delegation consistent with the purposes of the trust; and
- (c) periodically reviewing the agent's actions to monitor the agent's performance and compliance with the terms of the delegation.

5.22.2 In performing a delegated function, an agent has a duty to the Trust to exercise reasonable care to comply with the terms of the delegation.

5.22.3 A Trustee who complies with the requirements of this Subsection 5.22 is not liable to the Trust, any trust created hereunder, the Trust Participants or other beneficiaries of the Trust or any trust created hereunder for the decisions or actions of the agent to whom the function was delegated.

Section 5.23 President and Other Officers. The Board shall annually elect one of the Trustees as President of the Board. The Board may also elect such other officers or establish such committees as the Board deems necessary, shall designate the duties of such officers and committees and shall establish a chain of command as appropriate. Other than the President, officers shall not be required to be Trustees. The President shall execute any necessary documents on behalf of the Trust, including contracts, deeds, transfers, assignments and other documents to manage and carry out the purposes of the Trust, unless the Board designates others to execute such documents. The President shall also be responsible for scheduling and setting the agenda for Board meetings as requested by individual Trustees and as necessary to address effectively the needs of the Trust. All officers and committee members shall serve at the pleasure of the Board and may be removed at anytime by the Board.

ARTICLE 6
DISTRIBUTIONS, SPENDTHRIFT TRUSTS AND USE OF TRUST PROPERTY

Section 6.1 Distributions. The Board may from time to time distribute Trust Property as they deem advisable to individual Trust Participants, or all of them, in accordance with the Trust's overall purpose as set forth herein. Such distributions may be made to or for the benefit of the Trust Participants by any means deemed appropriate by the Board, including transfers by deed or in trust or by other appropriate instrument or means. It is specifically contemplated that property conveyances to Trust Participants through the means of spendthrift trusts may be a necessary and appropriate method to accomplish the ultimate goal of securing residences for Trust Participants.

Section 6.2 Right to Trust Property. No Trust Participant shall have a right to Trust Property. No single factor defining just wants and needs shall obligate the Board to use or distribute Trust Property to or for the benefit of any Trust Participant. The determination of the just wants and needs of a Trust Participant shall be made in the sole and absolute discretion of the Board.

Section 6.3 Mechanism for Trust Participants to Petition for Benefits. Any Trust Participant may make a request for benefits from the Trust by filing with the Board (or its authorized representative), a written petition setting forth the benefits desired and the facts and circumstances supporting such petition. Neither the filing of a petition nor the failure of the Board to respond to a petition shall entitle a Trust Participant to any benefit from the Trust. The Board may respond to the petition at such time, if ever, and in such manner as the Board in its sole discretion determines.

Section 6.4 Factors to Consider. Consistent with their fiduciary duties under the Utah Trust Code and the common law, the Board should use their life experiences, good judgment and common sense in administering the Trust Property and may consider some or all of the following factors in administering the Trust:

6.4.1 the financial condition and needs of the Trust Participant including existing or potential sources of income, compensation or other recovery;

6.4.2 the previous or present use of Trust Property by the Trust Participant, including the length of time the Trust Participant has used and relied on Trust Property;

6.4.3 the Trust Participant's cooperation with the Board, acceptance of occupancy agreements, operation of businesses on Trust Property consistent with the Trust's purposes and compliance with the rules and standards set by the Board;

6.4.4 the contribution of services or assets to the Trust, including improvements to Trust Property by the Trust Participant;

6.4.5 the efforts of the Trust Participant to protect Trust Property through donations for the payment of property taxes, land surveys, insurance premiums and other expenses related to the Trust;

6.4.6 the Trust Participant's efforts to keep Trust Property safe, in good repair and otherwise properly maintained;

6.4.7 the Trust Participant's ability or inability to cooperate openly with the Board;

6.4.8 any legitimate grievance a Trust Participant may have against the Trust;
and

6.4.9 recommendations received from an authorized representative of the FLDS Church concerning what a particular Trust Participant's just wants and needs may be in light of the religious principles of the FLDS Church. These recommendations shall be non-binding and shall be only one criterion to be considered and shall not be the controlling criterion. No recommendation may be considered, however, if it benefits, advocates or facilitates illegal practices. If the FLDS Church wishes to provide recommendations with respect to the just wants and needs of Trust Participants, it shall designate an authorized representative and shall communicate such designation to the Board in writing. The authorized representative may provide input to the Board in writing and/or may be given the opportunity to provide input at the meetings of the Board.

Section 6.5 Prohibited Consideration Factors. In administering the Trust, the Board shall not consider whether any Trust Participant participates in polygamy. In so doing, the Board will not be deemed to be benefitting, advocating or facilitating illegal practices.

Section 6.6 Occupancy and Use of Trust Property for Benefit of Trust Participants.

6.6.1 In addition to, or in lieu of, outright distributions of Trust Property, the Board may allow Trust Participants to occupy and use Trust Property, including real property and/or tangible personal property for Trust purposes. Such use of Trust Property by a Trust Participant shall not affect the record or beneficial ownership of such Trust Property, shall not be construed as a distribution, payment or delivery of such Trust Property by the Trust to the Trust Participant and the Trust shall retain all rights of ownership in such Trust Property.

6.6.2 Except as may otherwise be provided by the orders of courts of competent jurisdiction, the privilege to reside upon Trust real property and to occupy and use Trust Property is granted, and may be revoked, by the Board pursuant to Trust purposes. The use and/or occupancy of Trust Property is not and does not become a right or claim of anyone against the Trust.

6.6.3 Trust Participant use and occupancy of Trust Property must comply with rules and standards set by the Board. For example, the Board may require Trust Participants to do the following with respect to the Trust Property they use or occupy:

- (a) enter into occupancy agreements setting forth in detail the privileges and responsibilities associated with residing and/or operating businesses on Trust Property;
- (b) pay all property taxes and assessments;
- (c) secure and maintain adequate property insurance;
- (d) comply with all applicable governmental ordinances, codes and regulations;
- (e) operate businesses established on Trust Property consistent with the purposes of the Trust;
- (f) pay any other costs directly related to the Trust Property, such as a pro-rata share of survey costs, administrative costs, etc.;
- (g) keep the Trust Property safe, in good repair and to otherwise care for and maintain the Trust Property; and
- (h) pay rent and other costs and expenses as determined by the Board for the use of Trust Property and for community development, including, but not limited to, community buildings and places, schools, parks and cemeteries, etc.

6.6.4 To accomplish Trust purposes, the Board may require that Trust Participants and their families relocate to different locations on Trust Property, require them to share a location with others or revoke completely a Trust Participant's privilege to use and/or occupy Trust Property.

6.6.5 People who are granted the privilege to occupy or use Trust Property acknowledge by such occupancy or use their acceptance of the terms of this Agreement.

Section 6.7 Tax Effect of Distribution. The Board may, prior to a distribution, determine the tax effect of the distribution and may determine the persons responsible for payment of such taxes and may condition distributions upon the acceptance by the distributee of such responsibility.

Section 6.8 Spendthrift Trusts. The Board is specifically empowered to convey Trust Property to or for the benefit of Trust Participants through the means of individual spendthrift trusts if the Board in its discretion deems it appropriate. Trust Participants may be the beneficiaries of such spendthrift trusts.

Any spendthrift trust thus created shall meet the following requirements:

6.8.1 All conveyances of Trust Property into spendthrift trusts shall be irrevocable and in writing;

6.8.2 The Spendthrift Trustees and successor Spendthrift Trustees shall be appointed by the Board;

6.8.3 The spendthrift trust shall be in a form substantially similar to the spendthrift trust set forth in Exhibit "A", attached hereto; however, the Board may in its discretion determine the terms of any spendthrift trust as they deem appropriate.

Section 6.9 Claims Against Trust. The Board, in its sole discretion, may postpone, delay or refrain from making any or all distributions of Trust Property pending resolution of claims against the Trust.

ARTICLE 7 ADMINISTRATION OF TRUST - FIDUCIARY MATTERS GENERALLY

Section 7.1 Bonds for Fiduciaries. Except as otherwise required by the Court, no Fiduciary appointed hereunder, wherever acting, shall be required to give bond or surety.

Section 7.2 Fiduciary Liability. An Individual Fiduciary hereunder shall be liable only for a breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries and not for any honest error in judgment. No Individual Fiduciary hereunder shall be liable for any action taken or not taken in reliance upon the opinion or advice of counsel, nor for the default or misconduct of any counsel, agent (including a professional investment manager) or other representative selected by such Fiduciary with reasonable care and in good faith. In any contract or agreement made by a Fiduciary on behalf of the Trust, the Fiduciary may and is hereby authorized to stipulate and provide against personal

liability on such contracts. The rights created under and by virtue of such contract or contracts shall belong to the Trust, and the obligations under and by virtue of such contract or contracts shall be the obligation of the Trust. A Fiduciary shall not be personally liable on contracts properly entered into in his fiduciary capacity in the course of administration of the Trust. A Corporate Fiduciary acting hereunder shall be liable and responsible to the degree required by the laws of the state wherein it is authorized to act as a fiduciary. No Fiduciary shall be personally liable for obligations arising from ownership or control of Trust Property or for any torts committed in the course of administration of the Trust unless he is personally at fault.

Section 7.3 Indemnification of Fiduciaries.

7.3.1 Extent of Indemnification. With the exception of damages, if a Trustee defends or prosecutes any proceeding in good faith, whether successful or not, the Trustee is entitled to receive from the Trust the necessary expenses and disbursements, including reasonable attorney's fees, incurred. As to damages, the Trust shall indemnify each Fiduciary from any and all damages required to be paid to a third party except for damages resulting from a Fiduciary's breach of trust committed in bad faith or with reckless indifference to the purposes of the Trust or the interests of the beneficiaries.

7.3.2 Advances. The Trust may pay for or reimburse the reasonable expenses incurred by a Trustee who is a party to a proceeding in advance of final disposition of the proceeding if:

- (a) The Trustee delivers to the Board a written affirmation of his good faith belief that he has met the applicable standard of conduct described in Utah Code Section 75-7-1004;
- (b) The Trustee delivers to the Board a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and
- (c) A determination is made by the Board (with the Trustee to be indemnified abstaining) that the facts then known to the Board would not preclude indemnification under this Section .

The undertaking required by Section 7.3.2(b) must be an unlimited general obligation of the Trustee but need not be secured and may be accepted without reference to financial ability to make repayment.

Section 7.4 Transition on Change of Fiduciaries.

7.4.1 An outgoing Fiduciary, upon the effective date of removal, resignation, incapacity or death, shall cease to have any powers or discretions hereunder. At the earliest possible date thereafter, the outgoing Fiduciary, or his or her legal representative, shall deliver to

such Fiduciary's successor or to another then acting Fiduciary hereunder all of the Trust Property and original records which were in the possession of such Fiduciary and shall make available to each Fiduciary a complete record and inventory of the Trust Property and/or records for which the Fiduciary had responsibility.

7.4.2 Each successor Fiduciary, upon assumption of his fiduciary responsibilities, shall have the same powers and duties as his or her predecessor. The assumption by a successor Fiduciary shall not be complete until such successor executes a written acceptance of his office.

7.4.3 No successor Fiduciary shall be held liable for any mistake, negligence or willful misconduct of any preceding Fiduciary. Without limiting the generality of the foregoing, no Fiduciary shall be held liable for failing to make an examination of the actions or accounts of any preceding Fiduciary. If a successor Fiduciary learns of a breach of duty by a preceding Fiduciary, the successor Fiduciary shall as soon as reasonably practicable notify the Board of the breach. However, a successor Fiduciary's failure to notify the Board of a predecessor's breach shall not be grounds for a surcharge action against the successor Fiduciary. Fiduciaries shall be liable for their acts and omissions in accordance with the laws of the jurisdiction where the Trust is being administered.

Section 7.5 Fiduciary Determinations of Fact. All fiduciary determinations of fact made in the course of carrying out the terms of this Trust, if reasonably made on the basis of the then available information, shall be binding upon all concerned and shall fully protect the Fiduciaries even though it may subsequently be found that such a determination was erroneous.

Section 7.6 Fiduciary Construction of Instrument. The Fiduciaries may construe this instrument, if reasonably made, and any action taken relying upon such construction shall be binding upon all concerned and shall fully protect the Fiduciaries even though it may be subsequently determined that such construction is erroneous. Moreover, the Fiduciaries shall construe every provision of this Trust which is designed to meet specific requirements of the IRC Code in accordance with that design. Thus, if the IRC Code is changed, the Fiduciaries shall construe each affected provision of the Trust accordingly.

Section 7.7 Fiduciary Protection. If a Fiduciary disagrees with the actions taken or to be taken by the remaining Fiduciaries and if the Fiduciary could be held accountable for those actions, the Fiduciary may absolve himself or herself from any liability for the action taken or to be taken provided such Fiduciary supplies the remaining Fiduciaries with written notice of his or her disagreement within a reasonable time after the Fiduciary desiring to absolve himself or herself becomes aware of the action taken or to be taken.

ARTICLE 8
MISCELLANEOUS

Section 8.1 Governing Law. The construction and interpretation of this Trust and all questions concerning its administration shall be governed by the laws of the State of Utah.

Section 8.2 Fiscal Year. The fiscal year of the Trust shall be January 1 to December 31. The fiscal year of the Trust may be changed by the Board from time to time as it deems advisable.

Section 8.3 Amendments. This Trust shall be irrevocable except as follows:

8.3.1 Upon further order of the Court.

8.3.2 Upon the affirmative vote of the Board and with notice to the Attorney General of the States of Utah and Arizona, the Board may petition a court of appropriate jurisdiction for an order amending this Trust Agreement. Such an order should issue only upon a showing that the amendment requested is appropriate for the effective management of the Trust or for the continued fulfillment of its purposes.

Section 8.4 Trust Additions. The Board may accept any transfer (whether inter vivos or testamentary) of additional assets to the Trust after considering the tax, business, and potential liability and other consequences of such acceptance to the purposes of the Trust. Such acceptance may include the acceptance or imposition of conditions on the transfer. If the addition is made by will or trust, the Board may accept the statement of the personal representative or trustees that the assets delivered to the Trust constitute all of the assets to which the Trust is entitled without inquiring into the personal representative's or trustees's administration or accounting.

Section 8.5 Separability of Provisions. In the event that any provision of this Trust Agreement violates any rule or law, only such invalid provision and not the entire instrument shall be considered void and all of the other provisions hereof shall remain in full force and effect.

Section 8.6 Interpretation. Whenever necessary in this Trust Agreement and where the context requires, the singular term and the related pronoun shall include the plural, and the masculine feminine and neuter terms and pronouns shall be fully interchangeable.

Section 8.7 Descriptive Titles. The descriptive titles of the Articles, Sections and Paragraphs as used in this Trust Agreement are for convenience only and any construction of this Trust Agreement shall be made without reference to such titles.

Section 8.8 Delivery of Minutes and Annual Report. The Board shall be deemed to have made the Minutes and/or Annual Report (collectively the "Reports") available by delivering a copy of the Reports to each Trustee and either:

8.8.1 mailing a copy of the Reports to those Trust Participants who have requested a copy in writing and who have provided an address for delivery (the "Designated Recipients"); or

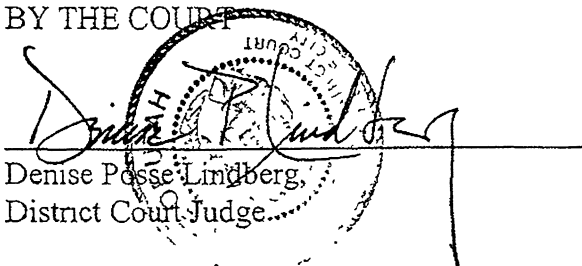
8.8.2 posting and maintaining for a reasonable period of time the Reports on a website and notifying the Designated Recipients of the website.

ARTICLE 9
INTERPRETATION OF ORIGINAL INTENT

In the event that the purposes for which this Trust has been created cannot, at any time, be carried out, the Fiduciaries are to administer the Trust for other purposes which are as similar to the original purposes as is reasonably possible and which are consistent with federal, state and common law.

Dated the 25th day of October, 2006.

BY THE COURT

A handwritten signature in dark ink is written over a circular embossed seal. The seal contains the text "DISTRICT COURT" and "H. H. H." around a central emblem. The signature is fluid and extends across the seal and to the right.

Denise Posse Lindberg,
District Court Judge.

ADDENDUM C

Deseret News

Shurtleff wants to freeze FLDS trust fund

Attorney general seeks to suspend Jeffs' authority

By Jenifer Dobner

Associated Press

Published: Thursday, May 26, 2005 11:43 p.m. MDT

The state Attorney General's Office has asked a court to freeze assets of a southern Utah polygamous church's trust fund and replace its top leaders — including reclusive prophet Warren Jeffs — with an independent third party.

The state is seeking the immediate suspension of Jeffs' authority, along with that of five other trustees, over the trust fund for the Fundamentalist Church of Jesus Christ of Latter Day Saints. The trust, called the United Effort Plan, controls church property and assets.

The trust fund has been estimated to be as much as \$100 million, but no one knows for sure, Attorney General Mark Shurtleff said Thursday.

A hearing on the state's request is scheduled today in Salt Lake City's 3rd District Court.

Church members formed the trust during the 1940s, willingly turning over their property to the church, so that all could share in the community's assets. FLDS members in good standing are allowed to build homes on trust land but are considered tenants at will by church authorities.

Recent court rulings have held that dissident members of the FLDS church must be reimbursed for improvements made to trust property. The "unjust enrichment" ruling was most recently applied to Colorado City resident Ross Chatwin, an excommunicated member of the polygamous church.

Shurtleff said Thursday's move is necessary because there is evidence that trustees have recently started to divest some trust assets and are not acting in the best interests of all church members.

"In stepping in today, we are protecting members of the FLDS church," Shurtleff told The Associated Press. "We think it's very clear, and we think the court will see, that (Jeffs) has breached his fiduciary duties."

Jeffs is thought to be on a 2,000-acre ranch near Eldorado, Texas, where he reportedly plans to move select members of the church.

Some ousted church members believe Jeffs is draining the church's trust in order to fund construction of the Texas compound and fear he will evict from their homes those who remain behind.

Salt Lake City attorney Rod Parker, who has long represented the FLDS church, said he might not represent them in this action.

But Parker, who was traveling and had not seen the court filing, said Shurtleff's actions do not respect the religious roots of the trust.

"A component of the trust is to respect the religious purpose of the trust," Parker said. "The trust is very clear as far as how it is to be managed and what people can expect from it."

Parker said he thinks Shurtleff's filing is another effort to "smoke out" Jeffs from wherever he is. He also denied that Jeffs intends on leaving some church members helpless by selling the homes or businesses out from under them.

"I don't see that happening," Parker said.

Shurtleff said attorneys in his office will recommend the court appoint the Salt Lake financial and estate planning law firm Callister, Nebeker & McCullough to manage the trust. He said his own office was uncomfortable taking control of the trust.

"We just felt it was better and cleaner and people would be more likely to believe we were really trying to help members of the church this way," Shurtleff said.

Jeffs is the target of two civil lawsuits in 3rd District Court that allege the 48-year-old leader sexually abused a nephew and is sending young men away from their homes and families to provide more brides for older men.

A third lawsuit, filed in 5th District Court last month, alleges that Jeffs conducted fraudulent financial transactions by transferring UEP property to private buyers that the FLDS church controls.

During an April 28 hearing on one of the civil suits, Judge Stephen Roth said he could not dissolve the UEP board of trustees as requested by the plaintiffs.

"On its face, the UEP is a charitable trust. Both the Utah and Arizona attorneys general recognize they have some interest in protecting the assets and potential beneficiaries of the trust," Roth said in addressing a motion that would have ordered the trustees to be replaced. "These two cases are essentially cases for monetary relief. To seek, obtain and force judgment. I don't believe I have the legal responsibility to take over the trust and administer it."

Roth said there was a more appropriate way to tackle the legal issues and gave Shurtleff 10 days to decide if he wanted to intervene.

"I urge you to file another lawsuit. Hit it head on," the judge said.

Contributing: Nancy Perkins, Deseret Morning News